GOVERNMENT OF INDIA,

LEGISLATIVE DEPARTMENT

THE

# UNREPEALED GENERAL ACTS

OF

# THE GOVERNOR GENERAL IN COUNCIL,

WITH CHRONOLOGICAL TABLE.

*IN THREE VOLUMES.*

## VOL. II,

FROM 1864 TO 1871, BOTH INCLUSIVE.

CALCUTTA:
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING.
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## REVISED ACTS.

*Alterations of the Fourth column of the Chronological Table prefixed to the First Volume.*

| *Opposite Act* | | |
|---|---|---|
| XXVIII of 1838, | *read* | 'Rep. (except as to Straits), VIII of 1868. Omitted.' |
| VI of 1844, | *insert* | 'XXXIV of 1867.' |
| XI of 1849, | *insert* | 'Ben. Act II of 1876.' |
| XL of 1850, | *read* | 'Rep. in part, XIII of 1856. Omitted.' |
| VIII of 1851, | *insert* | 'Rep. locally, Bom. Act III of 1875.' |
| XXXV of 1852, | *read* | 'Rep., II of 1876.' |
| XXXIV of 1854, | *read* | 'Rep., I of 1876.' |
| III of 1856, | *read* | 'Rep. locally, Ben. Act II of 1876. Printed, Madras Code.' |
| XIII of 1856, | *insert* | 'Rep. locally in part, Bom. Act I of 1872.' |
| XX of 1856, | *after* | 'locally in part,' *insert* 'XXII of 1871, s. 5.' |
| XXI of 1856, | *after* | '1874,' *insert* 'Ben. Act II of 1876.' |
| VIII of 1860, | *read* | 'Rep., I of 1876.' |
| XXIII of 1860, | *read* | 'Rep. locally, X of 1871. elsewhere, Ben. Act II of 1876.' |
| XXVII of 1860, | *insert* | 'Rep. except as to Hindús, Muhammadans and Buddhists and persons exempted from Act X of 1865, XXIV of 1867, s. 2.' |
| XXVIII of 1860, | *add* | 'Coorg Code.' |

In the text of vol. I, *cancel* pp. 342—345 and the first two lines of p. 346.

W. S.

# PREFACE.

THIS, the second volume of the revised edition of the Acts of the Governor General in Council, is published under the authority of the Government of India, and contains the unrepealed Acts passed between the years 1864 and 1871 (both inclusive), which extend, or are extendible, to the whole of British India or to the Presidency Towns.

It is founded on the official copies of the Acts preserved in the Legislative Department.

The only changes made in reprinting are the following :—

(*a.*) Repealed portions of Acts have been omitted, except in some cases where the repeal is not specific. In such cases the repeal is mentioned in a foot-note.

(*b.*) Where an Act directs that a section, a clause or words be inserted in a former Act, in reprinting the former Act the insertion has been made.

(*c.*) Where one Act refers to another and such reference is directed by a subsequent Act to be read as if made to the latter Act, the number, year and title of the latter Act have, as a rule, been substituted in the text.

(*d.*) In some instances marginal notes have been added ; in others, they have been shortened or corrected.

The Registrar, Legislative Department, is responsible for correct printing of unaltered matter.

Some foot-notes have been added. They are chiefly (*a*) cross-references to Indian Acts; (*b*) references to English Statutes

from which Indian Acts have been copied; (*c*) references to notifications in Indian Gazettes; and (*d*) references to the more important decisions of the High Courts as to the interpretation of the Acts hereinafter printed. It is hardly necessary to say that these notes are not authoritative.

The Chronological Table prefixed enumerates all Acts of the Governor General in Council passed during the period comprised in this volume, and shows at what pages those now printed will be found. It also shows whether a given Act has been repealed wholly, in part, or locally, and, in the case of unrepealed local Acts, where it is proposed to print them.

WHITLEY STOKES,
*Secy. to the Govt. of India,*
*Legislative Department.*

CALCUTTA;
10*th March* 1876.

## CHRONOLOGICAL TABLE OF ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

| Year. | Number. | Subject-matter. | How disposed of. |
|---|---|---|---|
| 1864 ... | I | Purwá and Khadí ... | Rep. XV of 1874. |
| | II | Aden ... ... | Printed, Bombay Code. |
| | III | Foreigners ... ... | Printed, General Acts, p. 649. |
| | IV | Small Cause Court, Karáchi | Rep., VIII of 1868. |
| | V | Extension of Civil Procedure Code to Sindh ... | Rep., VIII of 1868. |
| | VI | Whipping ... ... | Rep. in part, X of 1872; XVI of 1874.<br>Printed, General Acts, p. 656. |
| | VII | Salt, Central Provinces ... | Rep., VIII of 1875. |
| | VIII | Comptoir d'Escompte of Paris | Printed, Private & Personal Acts. |
| | IX | Repealing Act VIII of 1861 | Rep., VIII of 1868. |
| | X | Abkárí, Bengal ... | Rep., X of 1871. |
| | XI | Native Law Officers ... | Rep., VIII of 1868. |
| | XII | Effectuating Act IV of 1863 | Rep. in part, XIV of 1870.<br>Printed, Burma Code. |
| | XIII | Emigration of Native Labourers ... ... | Rep., VII of 1871. |
| | XIV | Joint Judge of the Konkan... | Rep., VIII of 1868. |
| | XV | Tolls on Public Roads and Bridges ... ... | Printed, General Acts, p. 658. |
| | XVI | Registration of Assurances | Rep., XX of 1866, s. 3.<br>Printed, General Acts, Appendix. |
| | XVII | Official Trustee ... | Rep. in part, XIV of 1870.<br>Printed, General Acts, p. 660. |
| | XVIII | Municipal Committee, Lakhnau ... ... | Rep. locally, XV of 1873.<br>Printed, Coorg Code. |
| | XIX | Mirzápur ... ... | Rep. (except in Scheduled Districts), XIV of 1874.<br>in part, XVI of 1874.<br>Printed, N. W. Provinces Code. |
| | XX | Minors, Bombay ... | Printed, Bombay Code.<br>„ Coorg Code. |

| Year. | Number. | Subject-matter. | How disposed of. |
|---|---|---|---|
| 1864 ... | XXI | Police Magistrates ... | Printed, General Acts, p. 668. |
| | XXII | Military Cantonments ... | Rep. in part, XIV of 1870; VIII of 1871. Printed, General Acts, p. 672. |
| | XXIII | Customs-duties ... ... | Rep., VIII of 1868. |
| | XXIV | Non-Regulation Districts, N. W. Provinces ... | Rep., XV of 1874. |
| | XXV | Marriage of Christians ... | Rep., V of 1865. |
| | XXVI | Small Cause Courts, Presidency Towns ... | Rep. in part, I of 1875. Printed, General Acts, p. 682. |
| | XXVII | Justices of the Peace ... | Rep., II of 1869. |
| | XXVIII | Ábkárí ... ... | Rep., X of 1871. |
| 1865 ... | I | Extension of Enactments to Non-Regulation Provinces... | Rep., XV of 1874. |
| | II | Rural Police, N. W. Provinces ... ... | Rep., III of 1869. |
| | III | Common Carriers ... | Printed, General Acts, p. 686. |
| | IV | Administrator General ... | Rep., XXIV of 1867. |
| | V | Marriage of Christians ... | Rep. (except as to Straits), XV of 1872. Omitted. |
| | VI | Continuing Arms Act ... | Rep., VI of 1866. |
| | VII | Government Forests ... | Rep. in part, IX of 1871. Printed, General Acts, p. 688. |
| | VIII | Validating Imprisonment of certain Persons ... | Rep., V of 1871. |
| | IX | Registration of Assurances | Rep., XX of 1866, s. 3. Printed, General Acts, Appendix. |
| | X | Intestate and testamentary Succession ... ... | Rep. in part, XXIV of 1867; VII of 1870. Printed, General Acts, p. 710. |
| | XI | Small Cause Courts, Mofussil | Rep. in part, VII of 1870; XIV of 1870. Printed, General Acts, p. 800. |
| | XII | Prisoners in Calcutta ... | Rep., XII of 1867. |
| | XIII | Criminal Procedure, High Courts ... ... | Rep., X of 1875. |
| | XIV | Civil Courts, Central Provinces ... ... | Rep. in part, XIV of 1870; XXXII of 1871. Printed, Central Provinces Code. |
| | XV | Pársí Marriages and Divorces ... ... | Rep. in part, VII of 1870; XIV of 1870. Printed, General Acts, p. 812. |
| | XVI | Revenue Courts, Oudh ... | Rep., XXXII of 1871. |

| Year. | Number. | Subject-matter. | How disposed of. |
|---|---|---|---|
| 1865 ... | XVII | Customs-duties ... | Rep., XXV of 1865. |
| | XVIII | Stamp-duties ... ... | Rep., VII of 1870.<br>Printed, General Acts, Appendix. |
| | XIX | Panjáb Courts ... | Rep. in part, XIV of 1870; XIV of 1875.<br>Printed, Panjáb Code. |
| | XX | Pleaders and Mukhtárs | Rep. in part, XIV of 1870.<br>Printed, General Acts, p. 822. |
| | XXI | Intestate Succession, Pársís... | Printed, General Acts, p. 835. |
| | XXII | Amending Act XVIII of 1864 ... ... | Rep. locally, XV of 1873.<br>Printed, Coorg Code. |
| | XXIII | Panjáb Chief Court ... | Rep., XII of 1873. |
| | XXIV | Warrants of Attorney and Cognovits ... ... | Rep., XVI of 1874. |
| | XXV | Customs-duties... ... | Rep., VIII of 1868. |
| | XXVI | Amending Native Articles of War ... ... | Rep., V of 1869. |
| | XXVII | Civil Appeals, Panjáb ... | Rep., IV of 1866, s. 52. |
| | XXVIII | Insolvent Traders, Bombay... | Rep., VIII of 1868. |
| | XXIX | Amending Pleaders Act, 1865 | Printed, General Acts, p. 838. |
| | XXX | Madras Irrigation Company | Rep. in part, XVI of 1874.<br>Printed, Private and Personal Acts. |
| 1866 .. | I | Government Paper Currency | Rep., III of 1871. |
| | II | Rural Police, N.-W. Provinces ... ... | Rep., III of 1869. |
| | III | Registrars, Recorders' Courts, Burma ... ... | Rep., VII of 1872. |
| | IV | Chief Court, Panjáb ... | Rep. in part, XIV of 1870; X of 1873; X of 1875.<br>Printed, Panjáb Code. |
| | V | Bills of Exchange: Commercial Law ... | Rep. in part, XIV of 1870; IX of 1872.<br>Printed, General Acts, p. 839. |
| | VI | Continuing Arms Act ... | Printed, General Acts, p. 843. |
| | VII | Extending Act XXIII of 1840 to Straits Settlements ... | Omitted. |
| | VIII | Criminal Procedure ... | Rep., VIII of 1869. |
| | IX | Extending Pleaders Act to Sadr Court, N. W. Provinces | Printed, N. W. Provinces Code. |
| | X | Trading Companies ... | Rep. in part, XIV of 1870.<br>Printed, General Acts, p. 857. |

| Year. | Number. | Subject-matter. | How disposed of. |
|---|---|---|---|
| 1866 ... | XI | Repealing Act IV of 1855 ... | Rep., XIV of 1870. |
| | XII | Private Water-courses ... | Rep. locally, XXX of 1871; VIII of 1873. |
| | XIII | Limitation of certain Suits, Oudh ... ... | Rep., XXXII of 1871. |
| | XIV | Post-Office ... ... | Rep. in part, XIV of 1870. Printed, General Acts, p. 946. |
| | XV | Partnership ... ... | Rep., IX of 1872. |
| | XVI | Signing Commissions under Act XIII of 1865 ... | Rep., X of 1875. |
| | XVII | Indian Museum, Calcutta ... | Omitted, as about to be repealed. |
| | XVIII | Customs-duty on Saltpetre ... | Rep., VIII of 1868. |
| | XIX | Salt, Madras ... ... | Rep., XXIV of 1869. |
| | XX | Registration of Assurances | Rep., VIII of 1871. Printed, General Acts, Appendix. |
| | XXI | Dissolution of Native Converts' Marriages ... | Rep. in part, VII of 1870; XVI of 1874. Printed, General Acts, p. 965. |
| | XXII | Extending Marriage Act ... | Rep., XV of 1872. |
| | XXIII | Correcting Bombay High Court Letters Patent ... | Printed, Bombay Code. |
| | XXIV | Procedure of High Court, N. W. Provinces ... | Rep. in part, X of 1875. Printed, N. W. Provinces Code. |
| | XXV | Transfer of certain Securities to Government ... | Rep. in part, XXIV of 1867; XVI of 1874. Printed, General Acts, p. 974. |
| | XXVI | Subordinate Proprietors, Oudh ... ... | Rep. in part, XIV of 1870. Printed, Oudh Code. |
| | XXVII | Conveyance of Property vested in Mortgagees and Trustees ... ... | Rep. in part, XIV of 1870; XVI of 1874. Printed, General Acts, p. 977. |
| | XXVIII | Powers of Mortgagees and Trustees ... ... | Rep. in part, XVI of 1874. Printed, General Acts, p. 996. |
| | XXIX | Court of Requests, Straits Settlements ... ... | Omitted. |
| | XXX | Excise Revenue, Straits Settlements ... ... | Omitted. |
| 1867 ... | I | Ganges Tolls ... ... | Printed, N. W. Provinces Code. |
| | II | Removal of Prisoners ... | Rep., V of 1871. |
| | III | Public Gambling ... | Rep. in part, XVI of 1874. Printed, N. W. Provinces Code; " Panjáb Code; " Oudh Code; " Central Provinces Code; " Burma Code. |

| Year. | Number. | Subject-matter. | How disposed of. |
|---|---|---|---|
| 1867 ... | IV | Meaning of "Offence" ... | Rep., XXVII of 1870. |
| | V | Extending Penal Code to Straits Settlements ... | Omitted. |
| | VI | Limits of Districts, Panjáb... | Printed, Panjáb Code. |
| | VII | Purchasing Arms, &c., from Soldiers ... ... | Printed, General Acts, p. 1011. |
| | VIII | Horse-racing ... ... | Rep., IX of 1872. |
| | IX | Comptoir d' Escompte of Paris ... ... | Printed, Private & Personal Acts. |
| | X | References by Mofussil Small Cause Courts ... ... | Printed, General Acts, p. 1013. |
| | XI | Oriental Gas Company ... | Printed, Private & Personal Acts. |
| | XII | Custody of Prisoners, Presidency Towns ... ... | Rep., V of 1871. |
| | XIII | Burma Coast-lights ... | Rep. in part, XVI of 1874; XII of 1875. Printed, Burma Code. |
| | XIV | Pándharí-tax, Central Provinces ... ... | Rep. in part, XVI of 1874. Printed, Central Provinces Code. |
| | XV | Municipal Committees, Panjáb, Oudh, Central Provinces ... ... | Rep. as to Panjáb, IV of 1873; Oudh, XV of 1873, s. 2; Central Provinces, XI of 1873, s. 2. |
| | XVI | Acting Judges ... | Printed, General Acts, p. 1014. |
| | XVII | Customs-duties ... | Rep., XVII of 1870. |
| | XVIII | Jhánsí Courts ... | Rep. in part, XIV of 1870; XVI of 1874. Printed, N. W. Provinces Code. |
| | XIX | Darjeeling ... ... | Rep. in part, XVI of 1874. Printed, Lower Provinces Code. |
| | XX | Transhipment of certain Goods | Rep., VI of 1873. |
| | XXI | Licensing Professions and Trades ... ... | Rep., IX of 1868. |
| | XXII | Saráis and Puraos ... | Printed, General Acts, p. 1014. |
| | XXIII | Murderous Outrages, Panjáb ... ... | Rep. in part, XVI of 1874. Printed, Panjáb Code. |
| | XXIV | Administrator General ... | Rep., II of 1874. |
| | XXV | Printing Presses and Books | Rep. in part, XIV of 1870. Printed, General Acts, p. 1019. |
| | XXVI | Stamp-duties ... | Rep. in part, VII of 1870. Printed, General Acts, p. 1026. |
| | XXVII | Deputy Commissioners ... | Rep. locally, XXXII of 1871. Printed, N. W. Provinces Code; „ Panjáb Code; „ Central Provinces Code. |

| Year. | Number. | Subject-matter. | How disposed of. |
|---|---|---|---|
| 1867 ... | XXVIII | Petty Sessions Courts, N.-W. Provinces ... | Rep., X of 1872. |
| | XXIX | Amending Act XXI of 1867 | Rep., IX of 1868. |
| | XXX | Paper Currency ... | Rep., III of 1871. |
| | XXXI | Certain Offences of Railway Servants ... ... | Printed, General Acts, p. 1026. |
| | XXXII | Chief Commissioners' Powers | Printed, Oudh Code; „ Central Provinces Code; „ Burma Code. |
| | XXXIII | Amending Act XXXI of 1861 | Rep., VIII of 1875. |
| | XXXIV | Local Repeal of Act XIX of 1866 ... ... | Rep., XIV of 1870. |
| | XXXV | Financial Commissioner, Panjáb ... ... | Rep., XIV of 1870. |
| | XXXVI | Correcting Act XVII of 1862 | Rep., X of 1872. |
| | XXXVII | Appeals, Oudh ... | Rep., XI of 1871. |
| 1868 ... | I | General Clauses ... | Rep. in part, I of 1872. Printed, General Acts, p. 1027. |
| | II | Pepper exported from Cochin | Rep., XIII of 1871. |
| | III | Powers of Assistant Commissioner, Panjáb ... | Rep. in part, XIV of 1870. Printed, Panjáb Code. |
| | IV | Exempting certain Bombay Villages from General Regulations... ... | Rep. (except in Scheduled Districts), XIV of 1874. Printed, Bombay Code. |
| | V | Commissioner in Sindh ... | Printed, Bombay Code. |
| | VI | Municipalities, N.-W. Provinces ... ... | Rep., XV of 1873. |
| | VII | Appeals and Reviews, Panjáb | Rep., IX of 1873. |
| | VIII | Repealing Obsolete Enactments | Rep., XIV of 1870. |
| | IX | Taxing Professions and Trades | Rep., IX of 1869. |
| | X | Amending Consolidated Customs Act ... ... | Printed, General Acts, p. 1029. |
| | XI | Exempting Timber from Import-duty ... ... | Rep., XIV of 1870. |
| | XII | Power to suspend Act XI of 1841, s. 17 ... ... | Printed, General Acts, p. 1030. |
| | XIII | King of Oudh ... | Rep. in part, XIV of 1870. Printed, Private & Personal Acts. |
| | XIV | Contagious Diseases ... | Rep. in part, IX of 1871. Printed, General Acts, p. 1030. |
| | XV | Stamps, High Courts ... | Rep., VII of 1870. |
| | XVI | P. S. Amíns, &c., Bengal ... | Rep., VI of 1871. |
| | XVII | Failure of Bank of Bombay... | Rep., XIV of 1870. |

| Year. | Number. | Subject-matter. | How disposed of. |
|---|---|---|---|
| 1868 ... | XVIII | Small Cause Jurisdiction, Nílgiris ... ... | Rep. in part, XIV of 1870; XVI of 1874. Printed, Madras Code. |
| | XIX | Rent, Oudh ... ... | Rep. in part, VII of 1870; XIV of 1870; XI of 1871, s. 3; XXXII of 1871, s. 40. Printed, Oudh Code. |
| | XX | Duties in Lakhnau ... | Rep., XIV of 1870. |
| | XXI | Nawáb of the Carnatic ... | Printed, Private & Personal Acts. |
| | XXII | Mauza Kheria ... .. | Rep., XV of 1874. |
| | XXIII | Ábkárí, British Burma ... | Rep., X of 1871. |
| | XXIV | Inoculation, Kumaon and Garhwál ... ... | Printed, N.-W. Provinces Code. |
| | XXV | Coorg Courts ... | Rep. in part, XIV of 1870; XVI of 1874. Printed, Coorg Code. |
| | XXVI | Municipal Lock-Hospitals ... | Printed, General Acts, p. 1037. |
| | XXVII | Registration ... ... | Rep., VIII of 1871. Printed General Acts, Appendix. |
| | XXVIII | Tenancy, Panjáb ... | Rep. in part, VII of 1870; XIV of 1870. Printed, Panjáb Code. |
| 1869 ... | I | Taluqdárs, Oudh ... | Printed, Oudh Code. |
| | II | Justices of the Peace ... | Rep. in part, XIV of 1870; X of 1873. Printed, General Acts, p. 1037. |
| | III | Rural Police, N.-W. Provinces | Rep., XVI of 1873. |
| | IV | Divorce ... ... | Rep. in part, VII of 1870; XII of 1873. Printed, General Acts, p. 1043. |
| | V | Native Articles of War ... | Rep. in part, XIV of 1870. Printed, General Acts, p. 1076. |
| | VI | Emigration ... ... | Rep., VII of 1871. |
| | VII | Forests, British Burma ... | Rep. in part, XIV of 1870; XIII of 1873. Printed, Burma Code. |
| | VIII | Criminal Procedure ... | Rep., X of 1872. |
| | IX | Income-tax ... ... | Rep., XVI of 1870. |
| | X | Police Superannuation Funds | Rep., XII of 1873. |
| | XI | Land Customs, Madras and Bombay ... ... | Rep. in part, XIV of 1870; XVI of 1874. Printed, Madras Code. „ Bombay Code. |

| Year. | Number. | Subject-matter. | How disposed of. |
|---|---|---|---|
| 1869 ... | XII | Customs-duties ... | Rep., XVII of 1870. |
| | XIII | Procedure of High Court, N.-W. Provinces ... | Rep. in part, X of 1875.<br>Printed, N.-W. Provinces Code. |
| | XIV | Civil Courts, Bombay ... | Rep. in part, XIV of 1870.<br>Printed, Bombay Code. |
| | XV | Evidence of Prisoners ... | Rep. in part, XVI of 1874.<br>locally, VII of 1872, s. 78.<br>Printed, General Acts, p. 1133. |
| | XVI | Bhután Dvárs ... | Rep. in part, XVI of 1874.<br>Printed, Lower Provinces Code. |
| | XVII | Landing Cargo ... | Printed, General Acts, p. 1139. |
| | XVIII | Stamp-duties ... | Rep. in part, VII of 1870, s. 34;<br>XIV of 1870;<br>XVI of 1874.<br>Printed, General Acts, p. 1142. |
| | XIX | Administrator General ... | Rep., II of 1874. |
| | XX | Volunteers ... ... | Rep. in part, XIV of 1870;<br>IX of 1871;<br>XVI of 1874.<br>Printed, General Acts, p. 1177. |
| | XXI | European Vagrancy ... | Rep., IX of 1874. |
| | XXII | Gáro Hills | Rep. (except as to Scheduled Districts), XIV of 1874.<br>Printed, Assam Code. |
| | XXIII | Income-tax ... ... | Rep., XVI of 1870. |
| | XXIV | Salt, Madras and Bombay | Rep. in part, XIV of 1870;<br>XIII of 1871;<br>XI of 1875.<br>Printed, Bombay Code. |
| | XXV | Salt, N. W. Provinces, Panjáb, &c. ... ... | Rep., VIII of 1875. |
| | XXVI | Correcting Act VIII of 1863 | Rep., V of 1871. |
| 1870 ... | I | Quarantine Rules ... | Printed, General Acts, p. 1182. |
| | II | Subordinate Judges and Munsifs, Bengal ... ... | Rep., VI of 1871. |
| | III | Agror Valley ... ... | Rep., IV of 1872. |
| | IV | Appeals to Assistant Commissioner, Kulu ... ... | Rep., V of 1874. |
| | V | Costs of certain Petitions... | Rep. in part, II of 1874;<br>XVI of 1874.<br>Printed, General Acts, p. 1183. |
| | VI | Fees for Registration of Emigrants ... ... | Rep., VII of 1871. |

| Year. | Number. | Subject-matter. | How disposed of. |
|---|---|---|---|
| 1870 ... | VII | Court-fees ... ... | Rep. in part, XIV of 1870; XVI of 1870; XX of 1870; VIII of 1871; XV of 1872. Printed, General Acts, p. 1186. |
| | VIII | Murder of Female Infants ... | Printed, General Acts, p. 1221. |
| | IX | Elphinstone Land Company... | Rep., XII of 1873. |
| | X | Acquisition of Land for Public Purposes ... ... | Rep. in part, IX of 1871. Printed, General Acts, p. 1226. |
| | XI | Weights and Measures ... | Rep., XII of 1873. |
| | XII | Native Passenger Ships ... | Rep. in part, XII of 1872. Omitted, as about to be repealed. |
| | XIII | State Railways ... ... | Printed, General Acts, p. 1240. |
| | XIV | Repealing Obsolete Enactments ... ... | Rep., XII of 1873. |
| | XV | Paper-currency ... ... | Rep., III of 1871. |
| | XVI | Income-tax ... ... | Rep., XII of 1871. |
| | XVII | Customs-duties ... ... | Rep., XIII of 1871. |
| | XVIII | Power to exempt from Customs-duties ... ... | Rep., XVI of 1875. |
| | XIX | Bank of Bengal ... | Omitted, as about to be repealed. |
| | XX | Amending Court-fees Act ... | Printed, General Acts, p. 1242. |
| | XXI | Wills of Hindús, &c. ... | Printed, General Acts, p. 1242. |
| | XXII | European British Subjects... | Rep. in part, XVI of 1874; X of 1875. Printed, General Acts, p. 1244. |
| | XXIII | Coinage and the Mint ... | Rep. in part, XII of 1873. Printed, General Acts, p. 1246. |
| | XXIV | Relief of Oudh Taluqdárs ... | Printed, Oudh Code. |
| | XXV | Timber-duty, Maulmain ... | Rep., XII of 1873. |
| | XXVI | Prisons ... ... | Rep. in part, XII of 1873; XVI of 1874. Printed, N.-W. Provinces Code; „ Panjáb Code; „ Oudh Code; „ Central Provinces Code; „ Burma Code; „ Coorg Code. |
| | XXVII | Amending Penal Code ... | Rep., in part, X of 1872. Printed, General Acts, p. 1252. |
| | XXVIII | Commitments from Andamans ... ... | Rep., in part, XII of 1873. Printed, Lower Provinces Code. „ Andamans Code. |

| Year. | Number. | Subject-matter. | How disposed of. |
|---|---|---|---|
| 1871 ... | I | Cattle-trespass ... | Rep. in part, XVI of 1874.<br>Printed, General Acts, p. 1256. |
| | II | Extending Prisons Act to Coorg ... ... | Rep. in part, XVI of 1874.<br>Printed, Coorg Code. |
| | III | Paper Currency ... | Rep. in part, XVI of 1874.<br>Printed, General Acts, p. 1263. |
| | IV | Coroners ... ... | Rep. in part, IX of 1871;<br>X of 1873;<br>XII of 1873;<br>XVI of 1874.<br>Printed, General Acts, p. 1272. |
| | V | Prisoners ... ... | Rep. in part, XII of 1873;<br>XVI of 1874.<br>Printed, General Acts, p. 1280. |
| | VI | Civil Courts, Bengal ... | Rep. in part, X of 1873;<br>XII of 1873;<br>XVI of 1874.<br>Printed, Lower Provinces Code;<br>„ N.-W. Provinces Code. |
| | VII | Emigration . . . | Rep. in part, XIV of 1872;<br>XVI of 1874.<br>Printed, General Acts, p. 1292. |
| | VIII | Registration of Documents ... | Printed, General Acts, p. 1327. |
| | IX | Limitation ... ... | Rep. in part, XII of 1875.<br>Printed, General Acts, p. 1355. |
| | X | Excise, Northern India, Burma, Coorg ... ... | Rep. in part, XII of 1873;<br>XVI of 1874.<br>locally, XXVI of 1872.<br>Printed, N.-W. Provinces Code;<br>„ Panjáb Code;<br>„ Oudh Code;<br>„ Central Provinces Code;<br>„ Burma Code;<br>„ Coorg Code. |
| | XI | Financial Commissioner, Oudh | Rep., XXXII of 1871. |
| | XII | Income-tax . . ... | Rep., XVI of 1874. |
| | XIII | Customs-duties... ... | Rep., XVI of 1875. |
| | XIV | Amending Consolidated Customs Act ... ... | Printed, General Acts, p. 1403. |
| | XV | Relief of Broach Thákurs . | Printed, Bombay Code. |
| | XVI | Survey of Steamers, Burma | Rep. in part, XVI of 1874.<br>Printed, Burma Code. |

| Year. | No. | Subject-matter. | How disposed of. |
|---|---|---|---|
| 1871 ... | XVII | Rates on Land, Oudh . | Rep. in part, XVI of 1874.<br>Printed, Oudh Code. |
| | XVIII | Rates on Land, N.-W. Provinces ... ... | Rep. in part, XVIII of 1873, s. 2; XVI of 1874.<br>Printed, N.-W. Provinces Code. |
| | XIX | Sessions Judges, Bengal and N.-W. Provinces ... | Rep. in part, X of 1872.<br>Printed, Lower Provinces Code. N.-W. Provinces Code. |
| | XX | Rates on Land, Panjáb ... | Rep. in part, XII of 1873; XVI of 1874.<br>Printed, Panjáb Code. |
| | XXI | Dehra Dún ... ... | Rep. in part, XVI of 1874.<br>Printed, N.-W. Provinces Code. |
| | XXII | Chaukídárs, N.-W. Provinces | Printed, N.-W. Provinces Code. |
| | XXIII | Pensions ... ... | Printed, General Acts, p. 1401. |
| | XXIV | Local Public Works Loan... | Rep. in part, XVI of 1874.<br>Printed, General Acts, p. 1409. |
| | XXV | Amending Railway Act ... | Rep. in part, XVI of 1874.<br>Printed, General Acts, p. 1411. |
| | XXVI | Advances for Agricultural Improvements .. | Rep. in part, XII of 1873; XVI of 1874.<br>Printed, General Acts, p. 1412. |
| | XXVII | Criminal Tribes and Eunuchs | Rep. in part, XVI of 1874.<br>Printed, General Acts, p. 1416. |
| | XXVIII | European Vagrants ... | Rep., IX of 1874. |
| | XXIX | Repealing Bengal Regulations | Rep., XII of 1873. |
| | XXX | Canals and Drainage, Panjáb | Rep., VIII of 1873. |
| | XXXI | Weights and Measures ... | Printed, General Acts, p. 1425. |
| | XXXII | Civil Courts, Oudh ... | Rep. in part, XVI of 1874.<br>Printed, Oudh Code. |
| | XXXIII | Land Revenue, Panjáb ... | Rep. in part, XII of 1873.<br>Printed, Panjáb Code. |

THE

# UNREPEALED GENERAL ACTS

OF

# THE GOVERNOR GENERAL IN COUNCIL.

## ACT No. III OF 1864.

*Received the Governor General's assent on the 12th February* 1864.

## An Act to give the Government certain powers with respect to Foreigners.[a]

WHEREAS it is expedient to make provision to enable the Government to prevent the subjects of foreign States from residing or sojourning in British India, or from passing through or travelling therein, without the consent of the Government; It is enacted as follows :— Preamble.

1. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say :— Interpretation-clause.

The words "British India" shall denote the territories which are or may become vested in Her Majesty by the Statute 21 & 22 Victoria, chap. 106, entitled "An Act for the better government of India :" "British India."

The words "Local Government" shall denote the persons authorized to administer the executive government in any part of British India, or the chief executive officer of any part of British India under the immediate administration of the Governor General of India in Council, when such chief executive officer shall, by an order of the Governor General of India in Council published in the *Gazette of India*, be authorized to exercise the powers vested by this Act in a Local Government : "Local Government."

The word "Foreigner" shall denote a person, not being either a natural-born subject of Her Majesty within the meaning of the Statute 3 & 4 William IV, chap. 85, section 81, or a Native of British India : "Foreigner."

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[a] Declared to apply to the whole of British India, except the Scheduled Districts, Act No. XV of 1874.

"The Magistrate of the District."

The words "the Magistrate of the District" shall denote the chief officer charged with the executive administration of a district and exercising the powers of a Magistrate, by whatever designation the chief officer charged with the executive administration is styled, or, in the absence of such officer from the station at which his Court is usually held, the senior officer at the station exercising the powers of a Magistrate as defined in the Code of Criminal Procedure :

"Vessel."

The word "Vessel" shall include anything made for the conveyance by water of human beings or property :

Number.

Words importing the singular number shall include the plural number and words importing the plural number shall include the singular number :

Gender.

Words importing the masculine gender shall include females.

Proof of being Foreigner.

2. If a question shall arise whether any person alleged to be a Foreigner and to be subject to the provisions of this Act is a Foreigner or not, or is or is not subject to the provisions of this Act, the onus of proving that such person is not a Foreigner, or is not subject to the provisions of this Act, shall lie upon such person.

Government may order Foreigner to remove himself.

3. The Governor General of India in Council may, by writing, order any Foreigner to remove himself from British India, or to remove himself therefrom by a particular route to be specified in the order ;

and any Local Government may, by writing, make the like order with reference to any Foreigner within the jurisdiction of such Government.

Foreigner refusing to remove, or returning without license after removal, may be apprehended and detained.

4. If any Foreigner ordered to remove himself from British India, or ordered to remove himself therefrom by a particular route, shall neglect or refuse so to do ; or

if any Foreigner, having removed himself from British India in consequence of an order issued under any of the provisions of this Act, or having been removed from British India under any of the said provisions, shall wilfully return thereto without a license in writing granted by the Governor General of India in Council or by the Local Government under whose order he shall have removed himself or been removed,—

such Foreigner may be apprehended and detained in safe custody, until he shall be discharged therefrom by order of the Governor General of India in Council, or of the Local Government within whose jurisdiction he shall be so apprehended or detained, upon such terms and conditions as the said Governor General of India in Council or Local Government shall deem sufficient for the peace and security of British India, and of the Allies of Her Majesty, and of the neighbouring Princes and States.

5. Whenever the Governor General of India in Council shall consider it necessary to take further precautions in respect of Foreigners residing or travelling in British India or any part thereof, it shall be lawful for the Governor General of India in Council, by a notification published in the *Gazette of India*, to order that the provisions of this and the subsequent sections of this Act shall be in force in British India, or in such part thereof as shall be specified in such notification, for such period as shall be therein declared; and thereupon, and for such period, the whole of this Act, including this and the subsequent sections, shall have full force and effect in British India or such part thereof as shall have been so specified.

Governor General may order provisions of Act to be in force in British India, or in part thereof.

The Governor General of India in Council may from time to time, by a notification published as aforesaid, cancel or alter any former notification which may still be in force, or may extend the period declared therein.

Provided that none of the provisions of this or the subsequent sections of this Act shall extend

Proviso.

to any foreign minister duly accredited by his Government;

to any consul or vice-consul;

to any person under the age of fourteen years; or

to any person in the service of Her Majesty.

6. Every Foreigner on arriving in any part of British India in which all the provisions of this Act are for the time being in force under an order issued as provided in the last preceding section, from any port or place not within British India, or from any port or place within British India where all the provisions of this Act are not in force, shall, if he arrive at a presidency town forthwith report himself to the Commissioner of Police of such town, or, if he arrive at any other place, then he shall forthwith report himself to the Magistrate of the District, or to such other officer as shall be appointed to receive such reports, by the Governor General of India in Council or by the Local Government of such place.

Foreigner to report arrival in India in certain cases.

7. The report shall be in writing, and shall be signed by the person reporting himself, and shall specify his name or names, the Nation to which he belongs, the place from which he shall have come, the place or places of his destination, the object of his pursuit, and the date of his arrival in such presidency town or other place.

What to be stated in report.

The report shall be recorded by the officer to whom it is made.

8. The provisions of the last two preceding sections shall not extend to any person being the master or commander of a vessel or employed therein;

but if any such person shall be in any part of British India in which all the provisions of this Act are for the time being in force, after he shall have

Foreigners, being masters of vessels or employed therein, when to report.

ceased to be actually employed in a vessel, he shall forthwith report himself in manner aforesaid.

Foreigners neglecting to report, how dealt with.

9. If any Foreigner shall neglect to report himself as required by this Act, he may be dealt with in the manner hereinafter provided in respect of Foreigners travelling without a license.

No Foreigner to travel without license.

10. No Foreigner shall travel in or pass through any part of British India in which all the provisions of this Act are for the time being in force without a license.

License by whom granted.

11. Licenses under this Act may be granted by the Governor General of India in Council or by any of the Local Governments, under the signature of a secretary to the Government of India or to such Local Government, as the case may be, or by such other officers as shall be specially authorized to grant licenses by the Governor General of India in Council, or by any of the Local Governments.

What to be stated in license.

12. Every such license shall state the name of the person to whom the license is granted, the Nation to which he belongs, the district or districts through which he is authorized to pass or the limits within which he is authorized to travel, and the period (if any) during which the license is intended to have effect.

License may be granted subject to conditions,

13. The license may be granted subject to such conditions as the Governor General of India in Council or the Local Government may direct, or as the officer granting the license may deem necessary.

and may be revoked.

Any license may be revoked at any time by the Governor General of India in Council, or by the Local Government of any part of British India in which all the provisions of this Act are for the time being in force and in which the Foreigner holding the same may be, or by the officer who granted the license.

Foreigner travelling without, or contrary to conditions of, license, may be apprehended.

14. If any Foreigner travel in or attempt to pass through any part of British India without such license as aforesaid, or beyond the districts or limits mentioned therein, or after such license shall have been revoked, or shall violate any of the conditions therein specified, he may be apprehended without warrant by any officer exercising any of the powers of a Magistrate, or by any European commissioned officer in the service of Her Majesty, or by any member of a volunteer corps enrolled by authority of Government whilst on duty, or by any Police-officer.

Procedure upon apprehension.

15. If any person be apprehended by a person not exercising any of the powers of a Magistrate and not being a Police-officer, he shall be delivered over as soon as possible to a Police-officer, and forthwith carried before the Magistrate of the District.

Whenever any person shall be apprehended by or taken before the Magistrate of the District, such Magistrate shall immediately report the case to the Local Government to which he is subordinate, and shall cause the person brought before him to be discharged, or to be conveyed to one of the presidency-towns, or, pending the orders of such Government, to be detained.

Magistrate to report to Government.

**16.** Any person apprehended or detained under the provisions of this Act may be admitted to bail by the Magistrate of the District, or by any officer authorized to grant licenses, and shall be put to as little inconvenience as possible during his detention in custody.

Persons apprehended may be admitted to bail.

**17.** The Local Government of any part of British India in which all the provisions of this Act are for the time being in force, may order any person apprehended or detained under the provisions of this Act to remove himself from any such part of British India, by sea or by such other route as the said Local Government may direct; or the said Local Government may cause him to be removed from such part of British India by such route and in such manner as to such Local Government shall seem fit.

Removal of persons apprehended.

The Governor General of India in Council may exercise all the powers given by this section to any Local Government.

**18.** The Governor General of India in Council may by order prohibit any person, or any class of persons, not being natural-born subjects of Her Majesty within the meaning of the Statute 3 & 4 William IV, chap. 85, section 81, from travelling in or passing through any part of British India in which all the provisions of this Act may for the time being be in force, and from passing from any part thereof to another without a license to be granted by such officer or officers as shall be specified in the order:

Governor General may prohibit persons not being natural-born subjects from travelling through India without license.

and if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act, and carried before the Magistrate of the District, and dealt with under the provisions of section 17 in the same manner as if he were a Foreigner:

Effect of disobedience.

and the Governor General of India in Council may order such person to be detained in safe custody, or under the surveillance of the Police, so long as it may be deemed necessary for the peace and security of British India or any part thereof.

**19.** The Local Government of any presidency or place in which all the provisions of this Act may for the time being be in force, may by order prohibit any person, or any class of persons, not being natural-born subjects of Her Majesty within the meaning of the Statute 3 & 4 William IV, chap. 85,

Like power of Local Governments within their respective jurisdictions.

section 81, from travelling in or passing through such presidency or place or any part thereof, and from passing from any part thereof to another, without a license to be granted by such officer or officers as shall be specified in the order;

Effect of disobedience.

and if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act, and carried before the Magistrate of the District, and dealt with under the provisions of section 17 in the same manner as if he were a Foreigner;

and the Local Government may order such person to be detained in safe custody, or under the surveillance of the Police, so long as it may be deemed necessary for the peace and security of British India or any part thereof.

Certain officers may board vessels to ascertain whether Foreigners are on board.

**20.** It shall be lawful for the Commissioner of Police, or for the Magistrate of the District, or for any officer appointed to receive reports as mentioned in the sixth section of this Act, or for any Police-officer under the authority of such Commissioner or Magistrate, to enter any vessel in any port or place within British India in which all the provisions of this Act may for the time being be in force, in order to ascertain whether any Foreigner bound to report his arrival under the said section 6 of this Act is on board of such vessel;

and it shall be lawful for such Commissioner of Police, Magistrate or other officer as aforesaid, to adopt such means as may be reasonably necessary for that purpose;

Master of vessel to furnish list of passengers, and to give information respecting them.

and the master or commander of such vessel shall also, before any of the passengers are allowed to disembark, if he shall be required so to do by such Commissioner of Police, Magistrate or other officer as aforesaid, deliver to him a list in writing of the passengers on board, specifying the ports or places at which they embarked, and the ports or places of their disembarkation, or intended disembarkation, and answer to the best of his knowledge all such questions touching the passengers on board the said vessel, or touching those who may have disembarked in any part of British India, as shall be put to him by the Commissioner of Police, Magistrate or other officer as aforesaid.

Foreigner refusing to give account of himself, how dealt with.

If any Foreigner on board such vessel in any part of British India shall refuse to give an account of his objects of pursuit in India, or if his account thereof shall not be satisfactory, the officer may refuse to allow him to disembark, or he may be dealt with in the same manner as a Foreigner travelling in British India without a license.

**21.** If the master or commander of a vessel shall wilfully give a false answer to any question which by section 20 of this Act he is bound to answer, or shall make any false report, he shall be held to have committed the offence specified in section 177 of the Indian Penal Code.

Penalty for false answer or report.

**22.** If the master or commander of any vessel shall wilfully neglect or refuse to comply with the requisitions of this Act, he shall, on conviction before the Magistrate of the District or a Justice of the Peace, be liable to a fine not exceeding two thousand rupees.

Penalty for master not complying with requisitions of Act.

**23.** Whoever intentionally obstructs any officer in the exercise of any of the powers vested in him by this Act, shall be held to have committed the offence specified in section 186 of the Indian Penal Code.

Penalty for obstructing officers.

**24.** All fines imposed under this Act may, according as they shall have been imposed for offences committed within or for offences committed beyond the limits of the towns of Calcutta, Madras and Bombay, be recovered by a Magistrate of Police or by the Magistrate of the District in the manner prescribed in section 26 of Act XLVIII of 1860[a] *(to amend Act XIII of 1856, for regulating the Police of the Towns of Calcutta, Madras and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore and Malacca)*.

Fines imposed under Act how recovered.

**25.** The Governor General of India in Council, or the Local Government of any part of British India in which this Act may for the time being be in force, may exempt any person, or any class of persons, either wholly or partially, or temporarily or otherwise, from all or any of the provisions of this Act contained in any of the sections subsequent to section 5, and may at any time revoke any such exemption.

Power to exempt from provisions of Act.

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[a] Repealed, as to Calcutta, by Bengal Act No. IV of 1866; as to Madras, by Madras Act No. VIII of 1867. Sec. 26 of Act XLVIII of 1860 is as follows:—

"All fines and penalties imposed by a Magistrate of Police under the authority of this Act, or of any other Act heretofore passed, or which shall hereafter be passed, if no other means for enforcing the payment of such fines and penalties are or shall be provided by such Act, may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender by warrant of the Magistrate. When a warrant of distress is issued, the Magistrate may order the offender to be detained and kept in safe custody, until return can be conveniently made to such warrant, unless the offender enter into a recognizance, with or without sureties, conditioned for his appearance before him on the day appointed for such return, such day not being more than eight days from the time of taking such recognizance; but if, before issuing such warrant of distress, it shall appear to the Magistrate, by the admission of the offender or otherwise, that no sufficient distress can be had within the jurisdiction of such Magistrate whereon to levy such fine or penalty, he may, if he think fit, refrain from issuing such warrant of distress; and in such case, or if such warrant shall have been issued, and, upon the return thereof, such insufficiency as aforesaid shall be made to appear to the Magistrate, he shall, by warrant, commit the offender to jail, there to be imprisoned, with or without hard labour, for any term not exceeding two months where the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months where the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case; the commitment to be determinable in each of the cases aforesaid on payment of the amount."

Levy of fines.

## ACT No. VI of 1864.

*Received the Governor General's assent on the 18th February 1864.*

# An Act to authorize the punishment of whipping in certain cases.[a]

Preamble.

WHEREAS it is expedient that in certain cases offenders should be liable, under the provisions of the Indian Penal Code, to the punishment of whipping; It is enacted as follows:—

Whipping added to punishments described in section 53 of Penal Code.

1. In addition to the punishments described in section 53 of the Indian Penal Code, offenders are also liable to whipping under the provisions of the said Code.

Offences punishable with whipping in lieu of other punishment prescribed by Penal Code.

2. Whoever commits any of the following offences may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the Indian Penal Code, that is to say:—

(1). Theft, as defined in section 378 of the said Code.

(2). Theft in a building, tent, or vessel, as defined in section 380 of the said Code.

(3). Theft by a clerk or servant, as defined in section 381 of the said Code.

(4). Theft after preparation for causing death or hurt, as defined in section 382 of the said Code.

(5). Extortion by threat, as defined in section 388 of the said Code.

(6). Putting a person in fear of accusation in order to commit extortion, as defined in section 389 of the said Code.

(7). Dishonestly receiving stolen property, as defined in section 411 of the said Code.

(8). Dishonestly receiving property stolen in the commission of a dacoity, as defined in section 412 of the said Code.

(9). Lurking house-trespass, or house-breaking, as defined in sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section.

(10). Lurking house-trespass by night, or house-breaking by night, as defined in sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section.

On second conviction of offence mentioned in section 2, whipping may be added to other punishment.

3. Whoever,[b] having been previously convicted of any one of the offences specified in the last preceding section, shall again be convicted of the same offence, may be punished with whipping in lieu of or in addition to any other

[a] Declared to apply to the whole of British India, except the Scheduled Districts, Act No. XV of 1874. "I think that the Indian Penal Code and the Code of Criminal Procedure must be read as if the Whipping Act [VI of 1864] formed a part of the Penal Code from the date of its enactment," per Norman, C. J., 7 Beng. 169. See, too, 5 Mad. Rulings, XVIII.

[b] Whether a juvenile or an adult offender, 7 Bomb., Cr. Ca., 70.

punishment to which he may for such offence be liable under the Indian Penal Code.[a]

Offences punishable, in case of second conviction, with whipping in addition to other punishment.

4. Whoever, having been previously convicted of any one of the following offences, shall be again convicted of the same [b] offence, may be punished with whipping in addition to any other punishment to which he may be liable under the Indian Penal Code, that is to say:—

(1). Giving or fabricating false evidence in such manner as to be punishable under section 193 of the Indian Penal Code.

(2). Giving or fabricating false evidence with intent to procure conviction of a capital offence, as defined in section 194 of the said Code.

(3). Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment, as defined in section 195 of the said Code.

(4). Falsely charging any person with having committed an unnatural offence, as defined in sections 211 and 377 of the said Code.

(5). Assaulting or using criminal force to any woman with intent to outrage her modesty, as defined in section 354 of the said Code.

(6). Rape, as defined in section 375 of the said Code.

(7). Unnatural offences, as defined in section 377 of the said Code.

(8). Robbery or dacoity, as defined in sections 390 and 391 of the said Code.

(9). Attempting to commit robbery, as defined in section 393 of the said Code.

(10). Voluntarily causing hurt in committing robbery, as defined in section 394 of the said Code.

(11). Habitually receiving or dealing in stolen property, as defined in section 413 of the said Code.

(12). Forgery, as defined in section 463 of the said Code.

(13). Forgery of a document, as defined in section 466 of the said Code.

(14). Forgery of a document, as defined in section 467 of the said Code.

(15). Forgery for the purpose of cheating, as defined in section 468 of the said Code.

(16). Forgery for the purpose of harming the reputation of any person, as defined in section 469 of the said Code.

(17). Lurking house-trespass, or house-breaking, as defined in sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section.

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[a] The Bombay High Court has held that this section does not apply when the second conviction is for an offence *committed* previously to the first conviction, 3 Bomb., Cr. Ca., 38 : 7 *ibid.*, 71.

[b] 4 Bomb., Cr. Ca. 5.

(18). Lurking house-trespass by night, or house-breaking by night, as defined in sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section.

Juvenile offenders punishable with whipping for offences not punishable with death.

5. Any juvenile offender[a] who commits any offence which is not by the Indian Penal Code punishable with death, may, whether for a first or any other offence, be punished with whipping in lieu of any other punishment to which he may for such offence be liable under the said Code.

When offences specified in section 4 may be punished with whipping in frontier-districts.

6. Whenever any Local Government shall by notification in the official Gazette have declared the provisions of this section to be in force in any frontier-district or any wild tract of country within the jurisdiction of such Local Government, any person who shall, in such district or tract of country, after such notification as aforesaid, commit any of the offences specified in section 4 of this Act, may be punished with whipping in lieu of any other punishment to which he may be liable under the Indian Penal Code.

Exemption of females and certain convicts.

7. No female shall be punished with whipping,

nor shall any person who may be sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years, be punished with whipping.

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## ACT No. XV of 1864.

*Received the Governor General's assent on the 24th March* 1864.

## An Act to amend Act VIII of 1851 (*for enabling Government to levy Tolls on Public Roads and Bridges*).

Preamble.

WHEREAS by Act VIII of 1851 (*for enabling Government to levy Tolls on Public Roads and Bridges*) authority was given for the levy of certain rates of toll, not exceeding the rates mentioned in the schedule annexed to that Act; and whereas it is expedient to make certain alterations in respect to the rates in the said schedule mentioned; It is enacted as follows:—

Schedule of Act VIII of 1851 repealed, and another substituted.

1. In any place to which this Act shall be extended by the Local Government, the schedule to the said Act VIII of 1851 shall be of no effect except as to any proceedings pending at the time at which this Act shall be so extended, and except as to any rate of toll levied theretofore:

and all the provisions of the said Act, applicable or referring to the rates of toll mentioned in the said schedule, shall be applicable and refer to the rates of toll mentioned in the schedule to this Act annexed, which shall be read with and taken as part of the said Act VIII of 1851.

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[a] *i. e.*, a person under the age of 16 years, 8 Bomb., Cr. Ca., 9, and not exempted under sec. 7.

2. Any person entrusted with the management of the collection of tolls under Act VIII of 1851, may in his discretion compound for any period not exceeding one year with any person for a certain sum to be paid by such person for himself or for any vehicle or animal kept by him, in lieu of the rates of toll specified in the schedule to the said Act VIII of 1851 or in the schedule to this Act.

Collectors of tolls may compound for tolls leviable under Act VIII of 1851 or this Act.

3. The Local Government may extend this Act to any place in which the said Act VIII of 1851 is in force; and the Local Government of any place in which the said Act VIII of 1851 is not in force may extend the said Act VIII of 1851 and this Act to such place.[a]

Power to extend Act.

4. For the purposes of this Act, the words "Local Government" shall denote the person authorized by law to administer executive government in any part of the territories vested in Her Majesty by the Statute 21 & 22 Vic., cap. 106, entitled "An Act for the better government of India."

Interpretation-clause. "Local Government."

## SCHEDULE.

| | Rs. | A. | P. |
|---|---|---|---|
| On every four-wheeled carriage ... ... | 2 | 0 | 0 |
| On every two-wheeled carriage ... ... | 1 | 0 | 0 |
| On every ekka ... ... ... ... | 0 | 4 | 0 |
| On every hackery on springs... ... ... | 0 | 2 | 0 |
| On every cart and hackery not on springs, drawn by eight bullocks, buffaloes, horses, ponies, asses or mules, if laden ... ... ... | 1 | 8 | 0 |
| Ditto, if not laden ... ... ... | 0 | 8 | 0 |
| On every cart and hackery drawn by six bullocks, buffaloes, horses, ponies, asses or mules, if laden ... | 0 | 12 | 0 |
| Ditto, if not laden ... ... ... | 0 | 6 | 0 |
| On every cart or hackery drawn by four bullocks, buffaloes, horses, ponies, asses or mules, if laden ... | 0 | 8 | 0 |
| Ditto, if not laden ... ... ... | 0 | 4 | 0 |
| On every cart and hackery drawn by two bullocks, buffaloes, horses, ponies, asses or mules, if laden ... | 0 | 4 | 0 |
| Ditto, if not laden ... ... ... | 0 | 2 | 0 |
| Buffaloes or bullocks, per head, if laden ... ... | 0 | 1 | 0 |
| Ditto, if not laden ... ... ... | 0 | 0 | 6 |

[a] Both Acts appear to apply to the Panjáb (Barkley, *Non-Regulation Law of the Panjáb*, pp. 379, 380), and have been extended to Oudh (*Gazette of India*, 1st July 1865, p. 777), and the Central Provinces (*ibid.*, 12th August 1871, p. 611).

| | Rs. | A. | P. |
|---|---|---|---|
| On every elephant ... ... ... | 1 | 8 | 0 |
| On every camel, if laden ... ... ... | 0 | 8 | 0 |
| Ditto, if not laden ... ... ... | 0 | 4 | 0 |
| On every horse, if laden or ridden ... ... | 0 | 1 | 6 |
| Ditto, unladen or led ... ... ... | 0 | 0 | 9 |
| On every tattú or mule, if laden or ridden ... | 0 | 0 | 9 |
| Ditto, unladen or led ... ... ... | 0 | 0 | 6 |
| On every ass, if laden or ridden ... ... | 0 | 0 | 6 |
| Ditto, unladen or led ... ... ... | 0 | 0 | 3 |
| On every sheep, or goat, or pig ... ... | 0 | 0 | 1 |
| On every palankeen, dúli, palna or tonjon with eight bearers ... ... ... ... | 1 | 0 | 0 |
| On every palankeen, dúli, palna or tonjon with six bearers ... ... ... ... | 0 | 12 | 0 |
| On every palankeen, dúli, palna or tonjon with four bearers ... ... ... ... | 0 | 8 | 0 |
| On every palankeen, dúli, palna or tonjon with two bearers ... ... ... ... | 0 | 4 | 0 |
| On every foot-passenger ... ... ... | 0 | 0 | 3 |

*N. B.*—Animals drawing any vehicle for which toll can be demanded are not to be also charged with toll.

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## ACT No. XVII of 1864.

*Received the Governor General's assent on the 24th March* 1864.

### An Act to constitute an Office of Official Trustee.

Preamble.

WHEREAS it is expedient to amend the law relating to Official Trustees, and to constitute an Office of Official Trustee; It is enacted as follows:—

Interpretation-clause.

1. The following words and expressions in this Act shall have the meanings hereby assigned to them unless there be something in the context repugnant to such construction, that is to say:—

"High Court."

The expression "High Court" shall mean Her Majesty's High Courts of Judicature at Fort William in Bengal, Fort St. George and Bombay respectively in the exercise of their original civil jurisdiction:

"Chief Justice."

The expression "Chief Justice" shall mean the Chief Justice or Acting Chief Justice for the time being of any of the said High Courts:

"Person."

The word "person" shall include a corporation:

Words importing the singular number shall include the plural, and words importing the plural number shall include the singular: Number.

Words importing the masculine gender shall include females. Gender.

2. [*Repealed by Act No. XIV of* 1870.]

3. Every Official Trustee appointed under the said Act XVII of 1843 [a] shall, save as regards the remuneration to be received by him, hold and execute the trusts of which he is trustee in all respects as if he were an Official Trustee appointed under this Act. Official Trustees under Act XVII of 1843 continued.

4. In each of the presidencies of Fort William in Bengal, Fort St. George and Bombay, there shall be an Official Trustee. Number of Official Trustees.

The said Official Trustees shall be called the Official Trustee of Bengal, the Official Trustee of Madras, and the Official Trustee of Bombay, respectively. Titles.

5. Every Official Trustee appointed under this Act shall be appointed and may be suspended or removed from his office by the authorities hereinafter named, that is to say— Appointment, suspension and removal.

The Official Trustee of Bengal by the Chief Justice of Her Majesty's High Court of Judicature at Fort William in Bengal:

The Official Trustee of Madras by the Chief Justice of Her Majesty's High Court of Judicature at Fort St. George:

The Official Trustee of Bombay by the Chief Justice of Her Majesty's High Court of Judicature at Bombay.

6. The Administrator General or Officiating Administrator General for the time being of any of the said presidencies shall be eligible for the office of Official Trustee of that presidency. Administrator General may be Official Trustee.

Every Official Trustee appointed under this Act shall give security for the due execution of the duties of his office in such manner and to such amount as the Chief Justice by whom he is appointed shall direct. Security to be given by Official Trustee.

7. It shall be lawful for the Chief Justice of the High Court at any of the presidencies from time to time to grant leave of absence to the Official Trustee of that presidency, but subject always to such and the like rules as may be for the time being in force as to leave of absence of the officers attached to such High Court. Leave of absence of Official Trustee.

Whenever any Official Trustee shall obtain leave of absence, it shall be lawful for the Chief Justice to appoint some person to officiate as Official Trustee, and such person while so officiating shall be subject to the same conditions and be bound by the same responsibilities as the Official Trustee, and he shall be deemed to be the Official Trustee for the time being under Appointment of person to officiate.

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[a] Repealed by section 2 of this Act.

this Act, and shall be liable to give security for the due execution of the duties of his office in like manner as if he had been appointed Official Trustee.

Official Trustee may, with consent, be appointed trustee of settlement by grantor, &c

8. If any person shall be about to grant, assign or settle any property, moveable or immoveable, of what nature or kind soever, upon or subject to any trust, whether for a charitable purpose[a] or otherwise, it shall be lawful for such person, with the consent of the Official Trustee, to appoint him, by the deed creating the trust, to be the trustee of such settlement;

Vesting of property.

and upon such appointment the property so granted, assigned or settled shall vest in such officer and his successors in office, and shall be held by him and them upon the trust declared and contained in the said deed.

Recital of consent.

Provided always that the consent of the Official Trustee shall be recited in the said deed, and that the deed shall be duly executed by the Official Trustee:

provided also that no trust for any religious purpose[b] shall ever be held by the Official Trustee, under this or under any other section of this Act.

Remuneration of Official Trustee appointed under section 8.

9. Every Official Trustee appointed trustee of any property under the last preceding section, shall be entitled to receive by way of remuneration in that behalf such sum or sums only as he shall by the deed of settlement be declared to be entitled to receive.

Other circumstances under which Official Trustee may be appointed trustee of property.

10. If any property is subject to a trust, whether for a charitable purpose or otherwise, and there shall be no trustee willing to act or capable of acting in the trusts thereof, who is within the local limits of the ordinary or extraordinary original civil jurisdiction of the High Court, or

if property is subject to a trust, and all the trustees, or the surviving or continuing trustee, and all the persons beneficially interested in the said trust, shall be desirous that the Official Trustee shall be appointed in the room of such trustees or trustee,

then and in any such case it shall be lawful for the High Court, on petition and with the consent of the Official Trustee, to appoint the Official Trustee to be the trustee of such property:

and upon such appointment such property shall vest in the Official Trustee and his successors in office, and shall be held by him and them upon the same trusts as the same were held previous to such appointment.

Rate of commission under section 10.

11. The Official Trustee shall be entitled by way of remuneration, in respect of all trust-property transferred to him under the last preceding

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[a] See the Statute of Charitable Uses, 43 Eliz., c. 4.

[b] It was thought that such trusts, when undertaken by a public trustee, would be within the principle of the prohibition contained in Act No. XX of 1863.

section, to a commission the rate of which shall be as follows, that is to say,—

on all capital-monies received by him, a commission of one-half per cent. on receiving the same:

on all capital-monies invested by him, a commission of one-half per cent. on investing the same:

on all sums received by him by way of interest or dividends in respect of monies invested, a commission of three-quarters per cent:

on all rents collected by him, a commission of two and a half per cent.

**12.** The Official Trustee shall defray all the expenses of the establishment necessary for his office, including the provision of office-accommodation, together with all other charges to which the said office shall be subject, except those for which express provision is made by this Act, and except those costs of litigation and the like which a trustee would, under ordinary circumstances, be entitled to pay for out of the trust-monies in his hand. What expenses, &c., commission to cover.

The commission to which the Official Trustee shall be entitled, is intended to cover all the expenses and risk and responsibility of management, collection and distribution.

**13.** It shall in no case be lawful to appoint the Official Trustee to be a trustee along with any other person: but the Official Trustee shall always be sole trustee. Official Trustee to be sole trustee.

**14.** The Official Trustee shall cause all capital-monies received by him to be invested in Government securities, or otherwise as the Court shall direct: Investment of trust-money.

and if in any case the trust-funds or any part of them shall at the time of their vesting in the Official Trustee be invested otherwise than as provided in the deed or will creating the trust, or than as ordered by the Court, it shall be the duty of the Official Trustee, as soon as he reasonably can, to realize the funds so improperly invested, and to invest the same in Government securities or otherwise as the Court shall direct. Alteration of improper investment.

**15.** The High Court may make any such orders as shall seem to it necessary respecting any trust-property vested in the Official Trustee, or the interest or produce thereon. High Court may make orders as to trust-property vested in Official Trustee.

All such orders shall be made on petition, unless the Court shall direct a suit to be instituted.

**16.** Nothing in this Act shall prevent the retransfer of any trust-property which may have become vested in the Official Trustee, to the original or any subsequently appointed trustee, or to such person as the Court shall direct, unless otherwise provided by the deed or will creating the trust. Retransfer of trust-property to original, or transfer to other, trustee.

Order of appointment of Official Trustee.

**17.** All orders which shall be made appointing any Official Trustee to act as trustee in virtue of his office, shall appoint him by his name of office, and shall authorize the Official Trustee for the time being of the same presidency to act as Official Trustee of the property to which such order shall relate:

On death, &c., of Official Trustee, property to vest in successor.

and all property and interests which at the time of the death, resignation or removal from office of any Official Trustee shall be vested in him by virtue of such order, shall upon such death, resignation or removal cease to be vested in him, and shall vest in his successor in office immediately upon his appointment thereto,

Transfer of books, &c.

and all books, papers, and documents kept by such Official Trustee by virtue of his office shall be transferred to and vested in his successor in office.

Official Trustee to sue or be sued by name of office.

**18.** All actions, suits or other proceedings which shall be commenced by or against any Official Trustee in his official character, may be brought by or against him by his name of office,

Suit not to abate by death, &c.

and no suit, action or other proceeding already commenced or which shall be commenced by or against any person as Official Trustee, either alone or jointly with any other person, shall abate by reason of the death, resignation or removal from office of any such Official Trustee,

Continuance of suit.

but the same may, by order of the Court and upon such terms as to the service of notices or otherwise as the Court may direct, be continued against his successor immediately upon his appointment, in the same manner as if no such death, resignation or removal had occurred.

Liability for prior costs.

Provided that nothing herein contained shall render any such successor personally liable for any costs incurred prior to the order for continuing the action or suit against him, or shall release an Official Trustee who has resigned or been removed from his office, or the heirs, executors, administrators or representatives of a deceased Official Trustee from being liable for any such costs.

Accounts to be kept by Official Trustee.

**19.** Every Official Trustee appointed under this Act shall enter into books to be kept by him for that purpose, separate and distinct accounts of each trust of which he is the trustee, and of all such sums of money and securities for money, goods and things, as shall come to his hands, or to the hands of any person employed by him, or in trust for him, under this Act, and likewise of all payments made by him on account of such trust, and of all debts due by or to the same, specifying the dates of such receipts and payments respectively,

Inspection of books.

which said books shall be kept in the Official Trustee's office, and shall be at all times open for the inspection by the Chief Justice and of any person authorized by him to demand inspection thereof.

20. The Chief Justice shall have power from time to time to make and alter any general rules and orders consistently with the provisions of this Act

Chief Justice may make and alter rules and orders for custody of trust-funds, &c.

for the safe custody of the trust-funds and securities which shall come to the hands or possession of the Official Trustee, and

for the remittance to Europe or elsewhere of all sums of money which shall be payable or belong to persons resident in Europe or elsewhere, or in other cases where such remittances shall be required, and

generally for the guidance and government of the Official Trustee in the discharge of his duties;

and may by such rules and orders, amongst other things, direct what books, accounts and statements, in addition to those mentioned in this Act, shall be kept by the Official Trustee, and in what form the same shall be kept, and what entries the same shall contain, and where the same shall be kept, and where and how the funds and securities and other the property belonging to the trust of which the Official Trustee is the trustee shall be kept or invested or deposited, and how any remittances thereof shall be made.

21. Such orders shall be published in the official Gazette, and it shall be the duty of the several Official Trustees to obey and fulfil the same, and the same shall be a full authority and indemnity for all persons acting in pursuance thereof.

Publication of orders, &c.

22. The Official Trustee of each of the said presidencies shall once in every year, that is to say, on the first day of March, or on such other day as the Chief Justice shall direct, deliver to the Chief Justice

Official Trustee to furnish annual schedules which shall be filed in High Court.

a true schedule shewing the gross amount of all sums of money received or paid by him on account of each trust of which he is the trustee, and the balances during the year ending on the thirty-first day of December next before the day of delivering such schedule, and

a true list of all securities received on account of each of the said trusts during the same period; and also

a true schedule of all trusts which shall have come to an end or of which the Official Trustee shall have ceased to be the trustee and the property subject to which shall have been paid or made over to the persons entitled to the same or to new trustees during the same period, specifying the nature and amount or value of such property and the persons to whom paid or made over.

The Chief Justice shall cause the said schedules to be filed as record in the High Court; but it shall not be lawful for any person to inspect the same or to make copies thereof or of any part thereof, except on an order granted by the Chief Justice permitting him so to do.

Filing and inspection of schedules.

Chief Justice to appoint auditors.

23. The Chief Justice shall from time to time appoint an auditor or auditors to examine the accounts of the Official Trustee at the time of the delivery of the said schedules and also at any other time when the Chief Justice shall think fit.

Auditors to examine schedules and accounts of Official Trustee and to report to Chief Justice.

24. The auditor or auditors shall examine the schedules and accounts, and report to the Chief Justice

whether they contain a full and true account of everything which ought to be inserted therein, and

whether the books which by this Act are, or which by any such general rules and orders as aforesaid shall be, directed to be kept by the Official Trustee, have been duly and regularly kept, and

whether the trust-funds and securities have been duly kept and invested and deposited in the manner prescribed by this Act or which shall be prescribed by any such rules and orders to be made as aforesaid.

Auditors' power to summon witnesses and to call for books, &c.

25. Every auditor shall have power

to summon as well the Official Trustee as any other person or persons whose presence he may think necessary, to attend him from time to time; and

to examine the Official Trustee or other party or parties, if he shall think fit, on oath or solemn affirmation to be by him administered; and

to call for all books, papers, vouchers and documents, which shall appear to him to be necessary for the purposes of the said reference;

Report to High Court of refusal or neglect to attend, or to produce books, &c.

and if the Official Trustee or other person or persons when summoned shall refuse, or without reasonable cause neglect, to attend or to produce any book, paper, voucher or document required, or shall attend and refuse to be sworn or make a solemn affirmation, when by law an affirmation may be substituted for an oath, or shall refuse to be examined, the auditor or auditors shall certify such neglect or refusal in writing to the High Court;

Penalty.

and every person so refusing or neglecting shall thereupon be punishable in like manner as if such refusal or neglect had been in contempt of the said High Court.

Costs of preparing schedules, &c., how paid.

26. The costs and expenses of preparing the said schedules and accounts, and of every such reference and examination as aforesaid, shall be defrayed by all the trust-estates to which such schedules or accounts shall relate, which costs and expenses, and the portion thereof to be contributed by each of the said trust-estates, shall be ascertained and settled by the auditor or auditors, subject to the approval of the Chief Justice, and shall be paid out of the said estates accordingly by the Official Trustee.

Matters to be reported by auditors.

27. If upon any such reference and examination the auditor or auditors shall see reason to believe

that the said schedules do not contain a true and correct account of the matters therein contained, or which ought to be therein contained, or

that the trust-funds and securities have not been duly kept and invested or deposited in the manner directed by this Act, or which shall be directed by any such rules and orders as aforesaid, or

that the Official Trustee has failed to comply with the provisions and directions of this Act, or of any such rules and orders,

he or they shall report accordingly to the Chief Justice.

Proceedings upon such report.

28. The Chief Justice may refer every such report as last aforesaid to the consideration of the Advocate General for the presidency, who shall thereupon, if he shall think fit, proceed summarily against the defaulter or his personal representative in the High Court by petition for an account, or to compel obedience to this Act or to such rules and orders as aforesaid, or otherwise as he may think fit, in respect of all or any of the trust-estates then or formerly under the charge of such defaulter;

and the Court shall have power, upon any such petition, to compel the attendance in Court of the defendant or defendants, and any witnesses who may be thought necessary, and to examine them orally or otherwise as the said Court shall think fit, and to make and enforce such order or orders as the Court shall think just.

Costs upon such proceedings, &c., how defrayed.

29. The costs, including those of the Advocate General, and of the reference to him, if the same shall be directed by the Court to be paid, shall be defrayed, either by the defendant or defendants, or out of the trust-estates rateably as the said Court shall direct;

and whenever any costs shall be recovered from the defendant or defendants, the same shall be repaid to the estates by which the same shall have been in the first instance contributed, and the Court shall have power to order the Official Trustee or other person or persons, defendants, to receive his or her costs out of the said estates, if it shall think fit.

Effect and execution of orders.

30. Any orders which shall be made by any of the said High Courts shall have the same effect and be executed in the same manner as decrees.

Who may apply for order under Act.

31. Any order under this Act may be made on the application of any person beneficially interested in any trust-property, or of any trustee thereof, whether under disability or not.

Executor or administrator may pay Official Trustee legacy, share, &c., of infant or lunatic.

32. If any infant or lunatic shall be entitled to any gift or legacy or residue or share thereof, it shall be lawful for the executor or administrator by whom such legacy, residue or share may be payable or transferable, or the party by whom such gift may be made, or any trustee of such gift, legacy,

residue or share, to pay or transfer the same to the Official Trustee appointed under this Act;

Leave of Court.

Provided that the leave of the High Court to make such payment or transfer shall be first obtained by motion made on petition.

Provisions applied to such property.

Any money or property paid or transferred to the Official Trustee or vested in him under this section shall be subject to the same provisions as are contained in this Act as to other property vested in such Official Trustee under the provisions thereof.

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## ACT No. XXI OF 1864.

*Received the Governor General's assent on the 1st April 1864.*

## An Act for the extension of the jurisdiction of the Magistrates of Police in Calcutta.

Preamble.

WHEREAS it is expedient to empower the Magistrates of Police in Calcutta to punish summarily certain offences in addition to those which they are now empowered so to punish; It is enacted as follows:—

Persons guilty of certain offences may be tried summarily by Magistrate of Police.

1. Every case in which any person is charged before a Magistrate of Police in Calcutta with having, within the limits of the said town, or within the limits of the port of Calcutta as those limits are or may hereafter be defined under Act XII of 1875[a] (*to consolidate and amend the law relating to Ports and Port-dues*), committed any offence under any of the provisions contained in chapter XIV of the Indian Penal Code except sections 280 and 281, may be heard and determined by such Magistrate in a summary way:

and every such person shall on conviction by such Magistrate be punished in the manner provided by the Indian Penal Code for the punishment of the offence of which he shall be convicted.

Provided that no Magistrate shall under this Act be competent to pass sentence in respect of any offence beyond the following limits, that is to say:—

Imprisonment of either description not exceeding six months, or fine not exceeding two hundred rupees, or both imprisonment and fine in cases in which both punishments are authorized by the Indian Penal Code.

Provided also that the Magistrate may commit to the High Court for trial any such case which he may in his discretion think it proper so to commit.

Sections of Criminal Procedure Code

2. Sections 518, 519, 521, 522, 523, 525, 526, 527 and 528[b] of the Code of Criminal Procedure are hereby extended to and shall have operation within

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[a] See Act No. XII of 1875, sec. 3, para. 3.

[b] See Act No. X of 1872, sec. 2 and sched. V.

the town of Calcutta and within the limits of the port of Calcutta defined as aforesaid, and the words "Magistrate" and "Magistrate of a District" as used in the said sections shall denote any Magistrate of Police in Calcutta who may be authorized in that behalf by the Local Government. extended to Calcutta.

3. Any Magistrate of Police in Calcutta authorized as aforesaid may without any complaint take cognizance of any offence which he has power to hear and dispose of in a summary manner, which may come to his knowledge, and he may issue a summons, or, in cases where a warrant may issue, a warrant of arrest, against the person known or suspected to have committed such offence, in the same manner as if a complaint had been made against such person. Magistrate may take cognizance of offences without complaint made.

4. Save as in this Act otherwise provided, the procedure contained in Act XIII of 1856 [a] (*for regulating the Police of the Towns of Calcutta, Madras and Bombay*) as amended by Act XLVIII of 1860 [b] (*to amend Act* XIII *of* 1856) shall be applicable to offences committed and charges made under this Act. Procedure in such cases.

5. This Act shall come into operation on the first day of May 1864. Commencement.

6. This Act may, by an order of the Governor in Council of Fort St. George, or of the Governor in Council of Bombay, respectively, to be published in the official Gazette, be extended to the towns and ports of Madras and Bombay,[c] and when so extended by such order, shall take effect in the town and port to which the order shall relate from the date of the publication of such order. Act may be extended to Madras and Bombay.

When so extended to either the town and port of Madras, or the town and port of Bombay, this Act shall in all respects apply to such town and port as if the name of such town and port had appeared in this Act wherever the name of Calcutta appears.

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## MILITARY CANTONMENTS.

### Arrangement of Sections.

Section.

Preamble.
1. Interpretation-clause.
2. [*Repealed.*]
3. Criminal jurisdiction of Cantonment Magistrate.
4. Powers of Cantonment Magistrate.

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[a], [b] Repealed, as to Calcutta, by Bengal Act No. IV of 1866; as to Madras, by Madras Act No. VIII of 1867.

[c] It was extended to Madras on 21st June, 1864, and to Bombay on 1st March, 1865.

SECTION.

5. Assistant Cantonment Magistrate.
6. Small Cause Courts may be established in cantonments.
7. Act XLII of 1860 to apply to all such Courts.
8. Acts establishing military Courts of Requests to cease to have effect in cantonments where Cantonment Magistrates appointed Small Cause Court Judges.
9. Investing Assistant Cantonment Magistrate with Small Cause Court Judge's powers.
10. [*Repealed.*]
11. Act V of 1861 applied to Police in military cantonments.
Administration of Police within cantonments.
12. Extension of section 34, Act V of 1861, to military cantonments.
13. Service and execution, through cantonment Police, of process issued by commanding officer.
14. Local Government may extend Act XX of 1856 to military cantonment.
15. And may order division of cantonments, &c.
16. And may prescribe rules for regulating expenditure of funds raised.
17. And may make rules as to matters hereinafter mentioned.
Rules may be general or special.
18. Rules to be confirmed by Governor General.
And published.
19. Rules may provide for—
occupation of government land:
resumption:
compensation:
registration of property and transfers:
purchase or hire of houses by officers:
administration of funds for public improvements:
nuisances:
sanitation, conservancy, &c.:
controlling brothels:
regulating water-sources:
public works:
registration of deaths:
cognizance and punishment of breach of rules.
20. Trial of breach of rules and regulations.
21. Levy of fines.

SECTION.

22. Imprisonment if fine not levied.
23. Place of imprisonment.
24. Prosecutions under other law not barred.
25. For protection of health of troops, rules under section 19, clause 7, extendible beyond cantonments.
26. How penalties imposed and enforced for breach of rules and regulations in extended limits.
27. Judicial notice of rules.
28. Effect of rules, &c., made under section 17, in respect of regulations, &c., previously in force.
Proviso.
29. Penalty for unauthorized sale of spirituous liquor, &c., to certain persons in cantonments.
30. Consequence of second conviction of offence under sec. 29.
31. Penalty on certain persons having in possession within cantonments more than certain quantity of spirituous liquor, &c., without permit.
32. Arrest of offenders under section 30 or 31 and seizure of liquor, &c., in possession.
33. Confiscation of liquor, &c., in respect of which conviction had or in possession of party convicted.
Reward to informer, &c.
34. Detention of property seized until accused convicted or acquitted.
Disposal on acquittal or conviction.
35. Saving of articles sold for medicinal purposes.
36. Act not to interfere with jurisdiction of Courts-martial, &c.
Proviso.
37. [*Repealed.*]
38. Extent of Act.
39. Power of Governor General to extend Act.
40. Power of Government of Madras, Bombay or Panjáb to extend Act.
41. Power of Government of Bengal or North-Western Provinces to extend Act.
42. Publication of orders.
43. Commitments and appeals from cantonment in district in which no person exercising Session Court powers.
Appeals from sentences in cases committed.
44. When powers of Sadr Court under Act XLII of 1860 exercisable by authority declared by Governor General.

SECTION.

45. [*Repealed.*]

46. Enactments inconsistent with Act when to cease to have effect in cantonments in Madras, Bombay and Panjáb.

## ACT No. XXII OF 1864.

*Received the Governor General's assent on the 1st April* 1864.

## An Act to make provision for the Administration of Military Cantonments.

Preamble.

WHEREAS it is expedient to make provision for regulating the administration of civil and criminal justice and the superintendence of police and conservancy, for protecting the public health within the limits of military cantonments, and for laying down local rules and regulations to be enforced within such limits; It is enacted as follows:—

Interpretation clause.

1. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say:—

"British India."

The words "British India" denote the territories which are or may become vested in Her Majesty by the Statute 21 & 22 Victoria, chapter 106, entitled "*An Act for the better government of India,*" except the Settlement of Prince of Wales' Island, Singapore and Malacca:

"Local Government."

The words "Local Government" denote the person or persons authorized by law to administer executive government in any part of British India:

"Section."

The word "Section" denotes a section of this Act:

Number.

Words importing the singular number include the plural number, and words importing the plural number include the singular number:

Gender.

Words importing the masculine gender include females.

2. [*Repealed by Act No. XIV of* 1870.]

Criminal jurisdiction of Cantonment Magistrate.

3. When any person shall be invested by the Local Government under the provisions of section 37 [a] of the Code of Criminal Procedure, with the powers of a Magistrate within the limits of any military cantonment, such person shall be styled the Cantonment Magistrate,

and within the limits of such cantonment shall, subject to the control of the Magistrate of the District in which such cantonment is situate, exercise the powers of a Magistrate as defined in the said Code, for the purpose of disposing of all cases arising within such cantonment which the Magistrate

[a] See Act No. X of 1872, section 2 and schedule V.

of the District might dispose of, and for the commitment for trial before the Court of Session of the district or place in which such cantonment is situate, of any person charged with any offence triable before the Court of Session, or for which the person charged shall appear to deserve a more severe sentence than a Magistrate is competent under the said Code of Criminal Procedure to award.

Powers of Cantonment Magistrate.

4. The Cantonment Magistrate shall be considered a Magistrate in charge of a division of a district within the meaning and for the purposes of the Code of Criminal Procedure.

Assistant Cantonment Magistrates.

5. When any person shall be invested by the Local Government under the provisions of section 37 [a] of the Code of Criminal Procedure with the powers of a subordinate Magistrate of the first or second class [b] within the limits of any military cantonment, such person shall be styled the Assistant Cantonment Magistrate, and shall be subject to the rules laid down for subordinate Magistrates in the said Code.

Small Cause Courts may be established in cantonments.

6. The Local Government may within the limits of any military cantonment establish a Court of Small Causes for the trial of suits of the nature described in section 3 of Act XLII of 1860 [c] (*for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter*),

and the Cantonment Magistrate, if there be a Cantonment Magistrate, shall be the Judge of the Court so established within his jurisdiction.

The Local Government shall from time to time declare the pecuniary limit of the jurisdiction of every Court established under this section, but such limit shall in no case exceed five hundred rupees. [d]

Act XLII of 1860 to apply to all such Courts.

7. Every Court of Small Causes established under this Act shall be deemed to be a Court established under the said Act XLII of 1860, [e]

and all the provisions of the said Act shall be applicable to every such Court, and to all suits instituted in any such Court, except as is herein otherwise provided. [d]

Acts establishing military Courts of Requests to cease to have effect in cantonments where

8. [d] Whenever a Court of Small Causes is established in any military cantonment under the provisions of section 6, the jurisdiction exercised in such cantonment by any officer under Act III of 1859 (*for conferring Civil Jurisdiction in certain cases upon Cantonment Joint Magistrates, and for constituting*

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[a] See Act No. X of 1872, section 2 and schedule V.

[b] *i. e.*, powers of a Magistrate of the second or third class, see Act No. X of 1872, sec. 2, para. 4.

[c] *i. e.*, Act No. XI of 1865, sec. 6. See section 50 of that Act.

[d] See Act No. XI of 1865, sections 48, 49.

[e] *i. e.*, Act No. XI of 1865. See sec. 50 of that Act.

Cantonment Magistrates appointed Small Cause Court Judges.

*those Officers Registrars of Deeds*) shall cease and determine,

and so much of any Act as authorizes the commanding officers of stations or cantonments to convene military Courts of Requests for the trial of actions of debt and other personal actions as aforesaid, shall cease to have effect within the limits of such cantonment.

Investing Assistant Cantonment Magistrate with Small Cause Court Judge's powers.

9. The Local Government may invest any Assistant Cantonment Magistrate with the powers of a Judge of a Court of Small Causes to try suits instituted in any Court which is established under section 6:

provided that no Assistant Cantonment Magistrate shall have jurisdiction to try suits for an amount exceeding fifty rupees.

10. [*Repealed by Act No. VIII of* 1871.]

Act V of 1861 applied to Police in military cantonments.

11. The Police-force employed in any military cantonment shall be deemed to be part of the General Police-force under the Local Government in whose territories such cantonment is situate, within the meaning of section 2, [a] Act V of 1861 (*for the Regulation of Police*), and all the provisions of the said Act shall be applicable to such force.

Administration of Police within cantonments.

The administration of the Police within the limits of any cantonment in which there shall be a Cantonment Magistrate shall be vested in the District Superintendent subject to the general control and direction of the commanding officer of such cantonment.

Extension of s. 34, Act V of 1861, to cantonments.

12. The Local Government may extend section 34 of the said Act V of 1861 to any military cantonment situate in the territories under such government.

Service and execution, through cantonment Police of process issued by commanding officer.

13. The commanding officer of a cantonment may send any process requiring service or execution by any means not immediately at his disposal, to the chief Police-officer in the cantonment for service or execution through the cantonment Police, and it shall be the duty of the said chief Police-officer to serve or execute such process in the same manner as if it had been issued by the Cantonment Magistrate, and subject to the same rules.

Local Government may extend Act XX of 1856 to military cantonment.

14. It shall be lawful for the Local Government to extend the provisions of Act XX of 1856 [b] (*to make better provision for the appointment and maintenance of Police Chaukídárs in Cities, Towns, Stations, Suburbs and Bázárs in the Presidency of Fort William in Bengal*) to any military cantonment to which a Cantonment Magistrate may be appointed,

and the Cantonment Magistrate of any military cantonment to which the said Act shall be so extended may exercise all the powers vested in a Magistrate by that Act subject only to the control of the Magistrate of the District and the Local Government.

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[a] Repealed, as to the Lower Provinces, by Bengal Act No. VII of 1869.

[b] Not in force in places to which Bengal Act No. VI of 1868 has been extended.

If there be no Cantonment Magistrate, the Magistrate of the District shall carry out the provisions of the said Act when so extended as aforesaid.

**15.** It shall be lawful for the Local Government to order that any military cantonment to which the provisions of the said Act XX of 1856 shall be extended be divided into any number of cantonment-divisions, and to determine the nature of the tax to be levied in each such division according to section 10 of the said Act.

And may order division of cantonments, &c.

**16.** The Local Government may prescribe rules for regulating the expenditure for the general purposes of this Act, of any funds raised under the said Act XX of 1856.

And may prescribe rules for regulating expenditure of funds raised.

Such funds may be expended for the purpose of carrying out any measures under any of the rules and regulations made under section 17 of this Act in addition to or in lieu of the purposes described in section 36 of the said Act XX of 1856.

**17.** The Local Government shall have power to make rules and regulations not inconsistent with the provisions of this Act or of any other law in force, to provide within the limits of any military cantonment for the matters hereinafter mentioned, and from time to time to repeal or alter such rules and regulations.

And may make rules as to matters hereinafter mentioned:

The rules and regulations made under this section may be general for all military cantonments in the territories under the Local Government making the same, or special for any one or more of such cantonments, according as the Local Government shall direct.

Rules may be general or special.

**18.** No rule or regulation made or altered under the last preceding section shall have effect until the same shall have been confirmed by the Governor General of India in Council.

Rules to be confirmed.

A copy of every such rule and regulation when so confirmed, in English and in the vernacular language chiefly in use, shall be hung up in some conspicuous part of the office of the Cantonment Magistrate, or in such other place as the Local Government or the commanding officer may direct.

And published.

**19.** The rules and regulations made under section 17 may provide—

Rules may provide for—

*1st,* for regulating, in cases in which the land within the limits of the cantonment is the property of Government and the occupation and use of which by private persons is only permissive, the conditions under which such occupation or use shall be allowed, and under which the Government may resume possession of such land, and under which compensation shall be given to persons occupying or using the land so resumed:

occupation of Government land;

resumption; compensation;

registration of property and transfers;

*2nd,* for maintaining proper registers of immoveable property within the limits of the cantonment, and for providing for the registration of transfers of such property:

purchase or hire of houses by officers;

*3rd,* for regulating the manner in which houses within the limits of the cantonment shall be claimable for purchase or hire, when necessary, for the accommodation of military officers:

administration of funds for public improvements;

*4th,* for regulating the management and expenditure of any funds made available by law or by the Government for the purpose of public improvements within the limits of the cantonment, or for carrying out any rules and regulations passed under this section, and the appointment of the necessary servants and establishments:

nuisances;

*5th,* for the definition and prohibition of public nuisances:

sanitation, conservancy, &c.;

*6th,* for the maintenance generally of the cantonment in a proper sanitary condition; for the prevention and cure of disease; for the management and regulation of the public roads, of conservancy and drainage; for the regulation and inspection of public and private necessaries, urinals, cess-pools, drains and all places in which filth or rubbish is deposited; of slaughter-houses, public markets, burial and burning-grounds, and of all offensive or dangerous trades and occupations:

controlling brothels;

*7th,* for inspecting and controlling houses of ill-fame and for preventing the spread of venereal disease:

regulating water-sources;

*8th,* for the supervision and regulation of public wells, tanks, springs or other sources from which water is or may be made available for public use:

public works;

*9th,* for the execution and promotion of works of public utility and convenience:

registration of deaths;

*10th,* for the registration of deaths, and for making and recording observations and facts important for the public health and interests:

cognizance and punishment of breach of rules.

*11th,* for the imposition of penalties on persons convicted of the breach of any rule or regulation made under section 17, and for declaring what persons shall make the preliminary inquiry into or take cognizance of any breach of such rules and regulations, and the manner in which the investigation shall be conducted.

Provided that no penalty so imposed shall exceed a fine of fifty rupees, or imprisonment for eight days with or without labour.

Trial of breach of rules and regulations.

**20.** Breaches of any rule or regulation made under section 17 shall be triable by the Cantonment Magistrate when there is such an officer:

but the Local Government may invest any Assistant Cantonment Magistrate, or any other person, with powers to try such breaches, and may authorize such person to exercise such powers independently of the Cantonment Magistrate.

The Magistrate of the District shall have no control over the Cantonment Magistrate, or over any Assistant Cantonment Magistrate, or any other person invested with such powers as herein aforesaid.

Levy of fines.

**21.** In every case in which an offender is sentenced to a fine for the breach of any rule or regulation made under section 17, the amount may in case of non-payment be levied by distress and sale of any moveable property of the offender which may be found within the limits of the cantonment.

Imprisonment if fine not levied.

**22.** If no such property sufficient for the payment of the fine can be found, the offender shall be liable to be imprisoned without labour for any term not exceeding one month.

Place of imprisonment.

**23.** The imprisonment under section 19 or section 22 may be, if without labour, in the civil jail; and if with labour, in the criminal jail of the district.

Prosecutions under other law, not barred.

**24.** Nothing in this Act nor in any rule or regulation made under section 17 shall prevent any person from being prosecuted under any other regulation or Act for any offence punishable under this Act, or from being liable under any other regulation or Act to any other or higher penalty or punishment than is provided for such offence by this Act.

Provided that no person shall be punished twice for the same offence.

For protection of health of troops, rules under section 19, clause 7, extendible beyond cantonments.

**25.** Whenever it shall appear necessary for the protection of the health of the troops in any military cantonment, it shall be lawful for the Governor General of India in Council

to extend to any place outside the limits of such military cantonment, and in the vicinity of such cantonment, all or any of the rules and regulations made for such cantonment under clause 7 of section 19, and

to make any additional rules and regulations under the said clause, and

to define the limits around such cantonment within which such rules and regulations or additional rules and regulations shall be in force.

How penalties imposed and enforced for breach of rules and regulations in extended limits.

**26.** When such rules and regulations, with any additional rules or regulations made as above, shall be extended under the last preceding section to any place outside the limits of such cantonment, it shall be lawful for the Governor General of India in Council to provide, in the manner described in clause 11 of section 19, for the imposition of penalties for the breach of such rules and regulations, and for prescribing the manner in which, and the persons by whom, breaches of such rules and regulations shall be inquired into or be cognizable.

Judicial notice of rules.

**27.** All Courts and Magistrates shall take judicial notice of all rules and regulations made under section 17 or section 25.

Effect of rules, &c., made under section 17, in respect of regulations, &c.

**28.** Whenever in any military cantonment, rules and regulations have been made under section 17, so much of any regulation or Act as may be held to empower the commanding officer to make local regulations regarding mat-

previously in force.

ters other than military shall cease to have any effect in such cantonment,

and all local regulations for any military cantonment which may have been made before the promulgation of the rules and regulations for such cantonment made under said section 17, shall cease to have any effect.

Proviso.

Provided that nothing in this section shall be held to interfere with any military authority vested in the said commanding officer under the Articles of War.

Penalty for unauthorized sale of spirituous liquor, &c., to certain persons in cantonments.

**29.** If within any military cantonment, or within any limits around such cantonment prescribed by the Local Government, any person not amenable to the Articles of War, or any sutler or camp-follower, shall knowingly barter, sell or supply, or offer or attempt to barter, sell or supply any spirituous liquor, wine, or intoxicating drug to, or for the use of, any European soldier, or to or for the use of any European or Eurasian being a camp-follower, or a soldier's wife, without a written license from the officer commanding or from some person having sufficient authority from the officer commanding to grant such license, the person so bartering, selling or supplying, or offering or attempting to barter, sell or supply, such spirituous liquor, wine, or intoxicating drug as aforesaid, shall be liable on conviction to a fine not exceeding one hundred rupees, or in the discretion of the Magistrate to imprisonment, with or without hard labour, for any period not exceeding three months, or in lieu of such fine or imprisonment to the punishment of whipping, as prescribed for offences under section 2 of Act VI of 1864 (*to authorize the punishment of whipping in certain cases*), subject to all the provisions of that Act.

Consequence of second conviction of offence under section 29.

**30.** If any person convicted of an offence under the last preceding section shall be again convicted of an offence under that section, any spirituous liquor, wine or intoxicating drug within such cantonment or limits, which at the time of the commission of such subsequent offence shall belong to or be in the possession of such person, shall without further proof be deemed to be in the possession of such person for the purpose of being supplied to European soldiers contrary to the provisions of this Act, and shall be liable to be seized and confiscated.

Penalty on certain persons having in possession within cantonments more than certain quantity of spirituous liquor, &c., without permit.

**31.** If any camp-follower or military pensioner, or the wife or the widow of any soldier, camp-follower or military pensioner shall, within such cantonment or limits, remove, convey or have in his or her possession any quantity of spirituous liquor or wine exceeding one ser or quart, without a permit to be signed by the officer in command, or such other officer as may be appointed by him to grant permits under this Act, every such person shall be liable upon conviction to a fine not exceeding fifty rupees,

and for any subsequent offence to a fine not exceeding one hundred rupees, or to imprisonment with or without hard labour, for any term not exceeding three calendar months:

provided that nothing in this section contained shall apply to any liquor brought into a cantonment for the private use of any commissioned officer.

Arrest of offenders under section 30 or 31 and seizure of liquor, &c., in possession.

**32.** If any person subject to the provisions of this Act shall be found committing any offence contrary to section 30 or section 31 of this Act, any Police-officer may immediately without warrant arrest such person,

and also seize any spirituous liquor, wine or intoxicating drug, together with any vessel containing the same, and anything used for the purpose of removing, conveying or concealing the same, which may be found in his possession,

and shall thereupon without delay take such person together with the things so seized, before the Cantonment Magistrate or other officer having jurisdiction to punish the offender.

Confiscation of liquor, &c., in respect of which conviction had, or in possession of party convicted.

**33.** In case of a conviction for any offence under section 30 or section 31 of this Act, the Cantonment Magistrate or other officer may adjudge any liquor, wine or intoxicating drug in respect of which the party shall be convicted, and any other spirituous liquor, wine or intoxicating drug which shall be found in his possession at the time of committing the offence, and any vessel containing the same, together with anything used for the purpose of conveying, removing or concealing the same or any part thereof, to be confiscated;

Reward to informer, &c.

and such Magistrate may order the whole or any part or parts of any fine imposed under this Act to be paid, as soon as the same shall be realized, to the person upon whose information such conviction shall take place, or to the officer who shall have apprehended the offender, or seized any of the goods adjudged to be confiscated.

Detention of property seized until accused convicted or acquitted.

**34.** Anything seized under section 32 in respect of which any person shall be charged with an offence, may be ordered to be detained until the person in whose possession the same shall have been seized shall be convicted or acquitted of the offence charged.

Disposal on acquittal or conviction.

If the person shall be acquitted, anything so seized shall be restored;

if he shall be convicted, such of the things only, if any, as shall not be adjudged by the Cantonment Magistrate or other officer to be confiscated, shall be restored: the remainder shall be dealt with as confiscated.

Saving of articles sold for medicinal purposes.

**35.** The foregoing sections shall not apply to the sale or supply of any article for medicinal purposes, by recognized medical practitioners, chemists or druggists.

Act not to interfere with jurisdiction of

**36.** Nothing in this Act shall interfere with the jurisdiction of Courts-martial, or of commanding officers of cantonments or of regiments, corps or

Courts-martial, &c.

detachments under Act XXIX of 1861[a] (*to consolidate and amend the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army*), or under Act V of 1863[b] (*to amend Act XXIX of* 1861),

or with the provisions of any Statute for punishing mutiny and desertion of officers and soldiers in the service of Her Majesty in the East Indies,

and the Cantonment Magistrate shall exercise no jurisdiction in respect of such offences.

Proviso.

Provided that, when a Cantonment Magistrate or other officer not being the commanding officer shall have been vested by the Local Government with power within the limits of any military cantonment to dispose of cases under any rule or regulation made under section 17, it shall not be competent to the commanding officer to exercise the powers described in Article 84 of the said Act XXIX of 1861 in respect of any case arising under such rule or regulation, when such rules and regulations have been passed for such cantonment under section 17, and penalties shall have been laid down for their infringement.

The said rules and regulations shall be held to be the rules and regulations mentioned in the said Article 84 of the said Act XXIX of 1861, and so much of the said Article as declares the penalties which may be inflicted for breach of cantonment-regulations, shall cease from that time to have any effect in such cantonment.

**37.** [*Repealed by Act No. XIV of* 1870.]

Extent of Act.

**38.** This Act shall, save as hereinafter is provided, extend only to the presidency of Fort William in Bengal.

Power of Governor General to extend Act.

**39.** The provisions of this Act may be extended by order of the Governor General of India in Council to any place under the immediate administration of the Government of India, and to any place in India but not in British India in which British troops are cantoned.

Power of Government of Madras, Bombay, or Panjáb to extend Act.

**40.** The provisions of this Act may be extended by order of the Governor of Madras in Council, or by order of the Governor of Bombay in Council, and by order of the Lieutenant-Governor of the Panjáb to any part of the territories subject to their respective Governments.[c]

Power of Government of Bengal, or North-Western Provinces to extend Act.

**41.** The provisions of this Act may be extended by order of the Lieutenant Governor of Bengal, or by order of the Lieutenant-Governor of the North-Western Provinces, to any part of the territories under their respective Governments not within the presidency of Fort William in Bengal.

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a, b Repealed by Act No. V of 1869.

c The cantonment-law in the Presidency of Madras is Mad. Act No. I of 1866: that in Bombay is Bomb. Act No. III of 1867.

42. Every order issued under sections 39, 40 or 41 shall be published in the official Gazette.

Publication of orders.

43. If in the territories not subject to the general Regulations, or in any part of India not subject to the British Government, any person be invested with the powers of a Cantonment Magistrate within the limits of any cantonment situated in any district or place in which there is no person exercising the powers of a Court of Session, the Governor General of India in Council may direct to what authority the commitments shall be made, and by what authority the appeals from the sentences and orders passed by such Cantonment Magistrate shall be heard and determined,

Commitments and appeals from cantonment in district in which no person exercising Session Court powers.

and such commitments and appeals shall be heard and determined by such authority in the same manner as if the commitments had been made, or the sentences or orders appealed from had been passed, by a Magistrate within the jurisdiction of a Court of Session.

The Governor General of India in Council may also direct by what authority appeals from the sentences and orders passed in cases committed by such Cantonment Magistrate shall be heard and determined;

Appeals from sentences in cases committed.

and such appeals shall be heard and determined by such last-mentioned authority in like manner as if the sentences and orders appealed from had been passed by a Court of Sessions.

44. If a Court of Small Causes shall be established under section 6 in any military cantonment in the territories not subject to the general Regulations, or in any part of India not subject to the British Government, the Governor General of India in Council shall declare what authority shall exercise the powers vested in the Sadr Court by the provisions of the said Act XLII of 1860.[a]

When powers of Sadr Court under Act XLII of 1860 exercisable by authority declared by Governor General.

45. [*Repealed by Act No. VIII of* 1871.]

46. From the date on which any Cantonment Magistrate shall begin to exercise jurisdiction under this Act in any cantonment in the territories subject to the Government of Madras, or to the Government of Bombay, or to the Lieutenant Governor of the Panjáb, so much of the Regulations and Acts for the time being in force in such part of the said territories as is in any way inconsistent with or repugnant to any of the provisions of this Act shall cease to have effect in such cantonment.

Enactments inconsistent with Act when to cease to have effect in cantonments in Madras, Bombay and Panjáb.

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[a] Repealed by Act No. XI of 1865, s. 2. See that Act, ss. 23—28, 42.

ACT No. XXVI OF 1864.

*Received the Governor General's assent on the 14th April 1864.*

# An Act to extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras and Bombay, and to provide for the appointment of an increased number of Judges of those Courts.

Preamble.

WHEREAS it is expedient to increase the limit of the jurisdiction of the Courts of Small Causes held under Act IX of 1850 (*for the more easy recovery of small debts and demands in Calcutta, Madras and Bombay*), and to increase the number of Judges of the said Courts: It is enacted as follows :—

Interpretation-clause.

1. The words "Local Government" and "High Court," as used in this Act, shall bear respectively the same meaning as the words "Governor in Council" and "Supreme Court," as used in the said Act IX of 1850.

Courts under Act IX of 1850 may take cognizance of suits for sums not exceeding 1,000 rupees.

2. The jurisdiction of the Courts held or to be held under the said Act IX of 1850 shall extend to the recovery of any debt, damage or demand exceeding the sum of five hundred rupees, but not exceeding the sum of one thousand rupees, and to all actions in respect thereof (except the several actions specified in the proviso in section 25 of the same Act),

provided that the cause of action shall have arisen, or the defendant at the time of bringing the action shall dwell or carry on business or personally work for gain, within the local limits of the jurisdiction of the Court.

Such Courts may take cognizance of suits for sums exceeding 1,000 rupees, if parties consent.

3. If both parties shall agree by a memorandum signed by them or by their attornies and filed with the Clerk of the Court of Small Causes, that the said Court shall have power to try any action (not included in the proviso in section 25 of Act IX of 1850) in which the debt or damage claimed or value of the property in dispute, whether on balance of account or otherwise, shall exceed the sum of one thousand rupees, then and in such case the said Court shall have jurisdiction to try such action.

4. [*Repealed by Act No. I of* 1875.]

Provisions of section 91, Act IX of 1850 extended to tenements not exceeding in value 1,000 rupees.

5. The powers and provisions of section 91 of Act IX of 1850 are hereby extended so as to apply to the case of any person who shall hold or occupy any house, land or tenement of which the value or the rent payable in respect thereof does not exceed the rate of one thousand rupees by the year,

and the said section 91 of Act IX of 1850 shall be read as if the words "five hundred" were omitted, and the words "one thousand" substituted for them.

Provisions of Act IX of 1850 and rules, &c., made in pur-

6. The several powers and provisions of the said Act IX of 1850, and all rules, orders and regulations which have been or may be made in pursuance of the said Act, sha extend to all debts, damages and demands which may be

sued for in the said Courts exceeding the sum of five hundred rupees, and to all proceedings and judgments for the recovery of the same, or otherwise in relation thereto respectively, as fully and effectually, to all intents and purposes, as the same respectively are now or may be applicable to debts, damages and demands within the present jurisdiction of the said Courts.

suance thereof, extended to demands under Act.

7. In any cause of an amount exceeding five hundred rupees, the Judges of the said Courts of Small Causes shall reserve any question of law or equity, or any question as to the admission or rejection of any evidence as to which they shall entertain any doubts, or which they shall be requested by either party to the suit to reserve for the opinion of the High Court,[a] and shall give judgment[b] contingent upon the opinion of the said High Court,[c] on a case which they shall thereupon be entitled to state to the said Court.

In what cases questions to be reserved for opinion of High Court.

If only two Judges sit together and shall differ in opinion, the question on which they differ shall be so reserved.

8. When judgment is given contingent upon the opinion of the High Court, the party against whom such judgment is given shall, unless he be willing to submit to such judgment, forthwith[d] give security to be approved by the Clerk of the Court, for the costs of the reference to the High Court and for the amount of the judgment;

Security in certain cases when question reserved for opinion of High Court.

provided nevertheless, that such security, so far as regards the amount of the judgment, shall not be required in any case where the Judge of the Court of Small Causes who tried the suit shall have ordered the defendant to pay the amount of such judgment into the hands of the Clerk of the said Court, and the same shall have been paid accordingly;

and the said High Court may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party as the case may be, and may make such order with respect to the costs of reserving the question and stating the same for their opinion, and otherwise arising thereout or connected therewith, as such High Court may think proper.[e]

Costs arising from reserving question, at discretion of High Court.

And all orders made by the High Court under this section shall be final.

9. If any action[f] shall after the passing of this Act be commenced in the High Court, for any cause other than those specified in section 100 of Act IX of 1850, for which a summons might have been taken out[g] from a Court held under the said Act IX of 1850 or under this Act, and in which such Court would have had jurisdiction, and if a verdict shall be found for the plaintiff for a sum less than one thousand rupees if the said action is founded on con-

No costs in cases brought in High Court when verdict for less than certain amount.

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[a] 5 Beng. 111.
[b] 12 Beng. 34.
[c] 7 Bomb., O. C. J., 180.
[d] 14 Beng. 180.
[e] 5 Beng. 500.
[f] 1 Beng., O. C. J., 27.
[g] 1 Beng., O. C. J., 66.

tract, or less than three hundred rupees if it is founded on wrong, the plaintiff shall have judgment to recover such sum only and no costs,

Defendant when entitled to his costs.

and if a verdict shall not be found for the plaintiff, the defendant shall be entitled to his costs as between attorney and client, unless in either case the Judge who shall try the case shall certify that, by reason of the difficulty, novelty or general importance of the case, or of some erroneous course of decisions in like cases in the Court of Small Causes, the action was fit to be brought in the High Court.

No costs to plaintiff in suit in High Court against officer of Court under Act IX of 1850, if verdict for no more than 1,000 rupees, unless Judge certify.

**10.** If any person shall bring any suit in the High Court in respect of any grievance committed by the clerk, bailiff or officer of any Court held under Act IX of 1850 or under this Act, or under colour or pretence of the process of the said Court, and upon the trial of the action no greater damages shall be found for the plaintiff than the sum of one thousand rupees, no cost shall be awarded to the plaintiff in such action unless the Judge shall certify in Court that the action was fit to be brought in the High Court.

Fees payable in Courts of Small Causes in suits under Act.

**11.** There shall be payable in the Court of Small Causes at Calcutta, Madras and Bombay, respectively, in every cause of an amount to which jurisdiction is given to the said Court by this Act, the fees set forth in the schedule hereto annexed, besides the sum of two annas in each rupee of the amount sued for, so far as such amount does not exceed five hundred rupees, and one anna in the rupee so far as such amount exceeds five hundred rupees, which fee shall be paid over to the same account as that to which the fees payable under section 19 of Act IX of 1850 are paid over.

Local Governments, with sanction of Governor General, may appoint as many Judges as necessary.

**12.** Whereas, by section 8 of the said Act IX of 1850, provision is made for the appointment of so many persons as may be necessary, not exceeding three, to be Judges of the said Courts of Small Causes respectively, it is hereby enacted that it shall be lawful for the Local Government, with the previous sanction of the Governor General of India in Council, to appoint as many persons as may be necessary to be Judges of the said Courts respectively.

Fees to barristers and attornies in suits tried under Act.

**13.** The fees to be taken by barristers-at-law and attornies practising in the said Courts in cases brought within the jurisdiction given by this Act, shall be as follows :—

an attorney shall be entitled to have or recover a sum not exceeding fifty-one rupees for his fees and costs,

and in no case shall any fee exceeding eighty-five rupees be allowed for employing a barrister as Counsel in the cause.

The expense of employing a barrister or an attorney, or both a barrister and an attorney, either by plaintiff or defendant, shall not be allowed as costs,

unless by order of the Judge, and the Judges of the said Court shall determine in what cases such expenses shall be so allowed.

**14.** Of the Judges appointed under section 8 of the said Act IX of 1850, the one who is a barrister-at-law or advocate of one of the High Courts of India, or of the Court of Session of Scotland, shall be styled the First Judge.

Barrister-Judge appointed under Act IX of 1850 to be styled First Judge; and to arrange distribution of business.

The First Judge shall make such arrangements as he shall think fit, with regard to the distribution of the suits and of the general business of the Court among the various Judges thereof: and he may vary such arrangements from time to time.

**15.** The Local Government may, with the sanction of the Governor General of India in Council, declare that the whole or any part or parts of the Code of Civil Procedure shall be applicable to any Court held under Act IX of 1850 or under this Act:[a] and the procedure prescribed in the said Code or the part or parts thereof so declared to be applicable shall thereupon be the procedure followed in such Court:

Code of Civil Procedure may be extended to Small Cause Courts.

Provided that no right of appeal or review shall in any case be given by any declaration made under this section.

**16.** This Act and the said Act IX of 1850 shall be read and construed as one Act, as if the several provisions in the said Act contained, not inconsistent with the provisions of this Act, were repealed and re-enacted in this Act.

Act to be read with Act IX of 1850.

## SCHEDULE OF FEES.

| Sums not above | Every summons or subpœna. | | Warrant. | |
|---|---|---|---|---|
| Rs. | Rs. | As. | Rs. | As. |
| 600 | 2 | 4 | 6 | 0 |
| 700 | 2 | 8 | 7 | 0 |
| 800 | 2 | 12 | 8 | 0 |
| 900 | 3 | 0 | 9 | 0 |
| 1,000 | 3 | 4 | 10 | 0 |

[a] Secs. 73 and 175—182 (both inclusive) of Act No. VIII of 1859, and sec. 10 of Act No. XXIII of 1861 have been declared applicable to the Small Cause Court of Calcutta, *Calcutta Gazette*, 1864, p. 1738. The extension of sec. 173 of Act No. VIII of 1859 has been sanctioned in the case of Calcutta (30th May, 1873), Madras (8th July, 1873) and Bombay (16th July, 1873). Sections 175, 177—182 of the same Act apply to the Bombay Court, *Bombay Government Gazette*, 12th September 1872, p. 1015.

## ACT No. III of 1865.

*Received the Governor General's assent on the 14th February* 1865.

# An Act relating to the rights and liabilities of Common Carriers.[a]

Preamble.

WHEREAS it is expedient not only to enable common carriers to limit their liability for loss of or damage to property delivered to them to be carried, but also to declare their liability for loss of or damage to such property occasioned by the negligence or criminal acts of themselves, their servants or agents; It is enacted as follows :—

Short title.

1. This Act may be cited as "The Carriers' Act, 1865."

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context—

"Common Carrier."

"Common Carrier" denotes a person, other than the Government,[b] engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately :

"Person."

"Person" includes any association or body of persons, whether incorporated or not :

Number.

Words in the singular number include the plural, and words in the plural include the singular.

Carriers not liable for loss of certain goods above 100 rupees in value, unless delivered as such.

3. No common carrier shall be liable for the loss of or damage to property delivered to him to be carried exceeding in value one hundred rupees and of the description contained in the schedule to this Act, unless the person delivering such property to be carried, or some person duly authorized in that behalf, shall have expressly declared to such carrier or his agent the value and description thereof.[c]

For carrying such property, payment may be required at fixed rates.

4. Every such carrier may require payment for the risk undertaken in carrying property exceeding in value one hundred rupees and of the description aforesaid, at such rate of charge as he may fix :

Proviso.

Provided that, to entitle such carrier to payment at a rate higher than his ordinary rate of charge, he shall have caused to be exhibited in the place where he carries on the business of receiving property to be carried, notice of the higher rate of charge required, printed or written in English and in the vernacular language of the country wherein he carries on such business.

Person entitled to recover in respect of property lost or damaged

5. In case of the loss of or damage to property exceeding in value one hundred rupees and of the description aforesaid, delivered to such carrier to be carried, when the value and description thereof shall have been declared

[a] Declared to apply to the whole of British India, except the Scheduled Districts, Act No. XV of 1874.

[b] See 3 N. W. P. 198.

[c] "The earlier sections extend to India the principle embodied in the English Statute 11 Geo. IV & 1 Wm. IV, c. 68." *Statement of Objects and Reasons.*

and payment shall have been required in manner provided for by this Act, the person entitled to recover in respect of such loss or damage shall also be entitled to recover any money actually paid to such carrier in consideration of such risk as aforesaid.

may also recover money paid for its carriage.

6. The liability of any common carrier for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any public notice;

In respect of what property liability of carrier not limited by public notice.

but any such carrier, not being the owner of a railroad or tramroad constructed under the provisions of Act No. X of 1870[a] (*for the acquisition of land for public purposes and for Companies*), may, by special contract, signed by the owner of such property so delivered as last aforesaid or by some person duly authorized in that behalf by such owner, limit his liability in respect of the same.

Carriers, with certain exceptions, may limit liability by special contract.

7. The liability of the owner of any railroad or tramroad constructed under the provisions of the said Act No. X of 1870,[b] for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any special contract;

Liability of owner of railroad made under Act X of 1870, not limited by special contract.

but the owner of such railroad or tramroad shall be liable for the loss of or damage to property delivered to him to be carried only when such loss or damage shall have been caused by negligence or a criminal act on his part or on that of his agents or servants.

When such owner answerable for loss or damage.

8. Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any property delivered to such carrier to be carried, where such loss or damage shall have arisen from the negligence or criminal act of the carrier or any of his agents or servants.

Common carrier liable for loss or damage caused by neglect or fraud.

9. In any suit brought against a common carrier for the loss, damage or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents.[c]

Suitors against carriers for loss, not required to prove negligence, &c.

10. Nothing in this Act shall affect the provisions contained in the ninth, tenth and eleventh sections of Act No. XVIII of 1854 (*relating to Railways in India*).

Saving of provisions of Act XVIII of 1854.

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a, b See Act No. X of 1870, sec. 2.

c This is in accordance with the English common-law. See *Ross* v. *Hill*, 2 Com. B. 890: *Richards* v. *Lond. Brighton & S. C. Ry. Co.*, 7 Com. B. 839.

SCHEDULE.

Gold and silver coin.
Gold and silver in a manufactured or unmanufactured state.
Precious stones and pearls.
Jewellery.
Time-pieces of any description.
Trinkets.
Bills and hundís.
Currency-notes of the Government of India, or notes of any Banks, or securities for payment of money, English or Foreign.
Stamps and stamped-paper.
Maps, prints, and works of art.
Writings.
Title-deeds.
Gold or silver plate or plated articles.
Glass.
China.
Silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials.
Shawls and lace.
Cloths and tissues embroidered with the precious metals or of which such metals form part.
Articles of ivory, ebony, or sandal-wood.

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## ACT No. VII OF 1865.

*Received the Governor General's assent on the 24th February* 1865.

## An Act to give effect to Rules for the management and preservation of Government Forests.

Preamble.

WHEREAS it is expedient that rules having the force of law should be made from time to time for the better management and preservation of forests wherein rights are vested in Her Majesty for the purposes of the government of India; It is enacted as follows:—

Interpretation-clause.

1. In this Act, unless there be something repugnant in the subject or context—

"Government Forests."

"Government Forests" shall mean such land covered with trees, brushwood or jungle, as shall be declared in accordance with the second section of this Act to be subject to its provisions.

"Magistrate" shall mean the chief officer charged with the executive administration of a district or place in criminal matters by whatever designation such officer is called, and shall include any person invested by the Local Government with the powers of a Magistrate or of a subordinate Magistrate as defined in the Code of Criminal Procedure, with a view to the exercise by him of such powers under this Act. "Magistrate."

And in every part of British India in which this Act operates, "Local Government" denotes the persons authorized to administer executive government in such part, and includes the Chief Commissioner of any part of British India under the immediate administration of the Governor General of India in Council, whenever such Chief Commissioner is authorized by the Governor General in Council to exercise the powers of a Local Government under this Act.[a] "Local Government."

**2.** The Governor General of India in Council within the provinces under his immediate administration, and the Local Governments within the territories under their control, may, by notification in the official Gazette, render subject to the provisions of this Act, such land covered with trees, brushwood or jungle, as they may define for the purpose by such notification; Governor General and Local Governments may render certain lands subject to provisions of Act.

Provided that such notification shall not abridge or affect any existing rights of individuals or communities.

**3.** For the management and preservation of any Government forests or any part thereof in the territories under their control, the Local Governments may, subject to the confirmation hereinafter mentioned, make rules in respect of the matters hereinafter declared, and from time to time may, subject to the like confirmation, repeal, alter and amend the same. Power to make rules for management of forests.

Such rules shall not be repugnant to any law in force.

**4.** Rules made in pursuance of this Act may provide for the following matters:— What may be provided for by rules made under Act.

*First.*—The preservation of all growing trees, shrubs and plants, within Government forests or of certain kinds only—

by prohibiting the marking, girdling, felling and lopping thereof, and all kinds of injury thereto;

by prohibiting the kindling of fires so as to endanger such trees, shrubs and plants;

by prohibiting the collecting and removing of leaves, fruits, grass, wood-oil, resin, wax, honey, elephants' tusks, horns, skins and hides, stones, lime or any natural produce of such forests;

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[a] The Chief Commissioners of Oudh, the Central Provinces and British Burma are authorised to exercise the powers of a Local Government under this Act, Home Department, No. 4751, dated 21st Sep. 1866 (*Gazette of India*, Sep. 22, 1866, p. 1147.)

by prohibiting the ingress into and the passage through such forests, except on authorized roads and paths;

by prohibiting cultivation and the burning of lime and charcoal, and the grazing of cattle within such forests.

*Second.*—The regulation of the use of streams and canals passing through or coming from Government forests or used for the transport of timber or other the produce of such forests—

by prohibiting the closing or blocking-up, for any purposes whatsoever, of streams or canals used or required for the transport of timber or forest-produce;

by prohibiting the poisoning of, or otherwise interfering with, streams and waters in Government forests in such a manner as to render the water unfit for use;

by regulating and restricting the mode by which timber shall be permitted to be floated down rivers flowing through or from Government forests and removed from the same;

by authorizing the stoppage of all floating timber at certain stations on such rivers within or without the limits of Government forests, for the purpose of levying the dues or revenues lawfully payable thereon;

by authorizing the collecting of all timber adrift on such rivers, and the disposal of the same belonging to the Government.

*Third.*—The safe custody of timber the produce of Government forests—

by regulating the manner in which timber, being the produce of Government forests, shall be felled or converted;

by prohibiting the converting or cutting into pieces or burning of any timber, or the disposal of such timber by sale or otherwise, by any person not the lawful owner of such timber, or not acting on behalf of the owner;

by regulating the manner in which property-marks shall be affixed to timber and other forest-produce in Government forests;

by prohibiting the affixing of property-marks to timber by any person not the owner of the timber or acting on behalf of the owner, so long as such timber shall be within certain territorial limits, or shall be in transit on certain rivers;

by prohibiting within certain territorial limits the effacing or alteration of property-marks on timber;

by prohibiting, within such limits, the use of the property-marks employed by the Government, or the fraudulent use of the property-marks of private persons;

by requiring the registry within certain territorial limits of implements for affixing property-marks on timber;

by directing the levying of fees for the registration of such implements:

*Fourth.*—The regulation of the duties of the Government officers and establishments charged with the management and conservancy of Government forests and with the levy of forest-dues and revenues—

by prohibiting their engaging in any employment or office other than their duties as public servants;

by fixing penalties for the wilful neglect of the rules laid down for the guidance of such persons in all matters connected with the guarding of the boundaries of the forests, the marking, girdling or felling of trees, the marking and passing of timber, the reporting and preventing of offences against the rules made in pursuance of this Act and the collecting of forest-dues or revenues.

Power to prescribe punishments for infringement of rules.

5. In cases where the penalty of confiscation is not provided by this Act, the Local Government may prescribe punishments for the infringement of rules made in pursuance thereof, by fine not exceeding five hundred rupees, and in default of payment of such fine may provide for the imprisonment of the offender for such term as is mentioned in the sixty-seventh section of the Indian Penal Code.

Rules when to have force of law.

6. Such rules when confirmed by the Governor General in Council and published in the official Gazette shall have the force of law.

Confiscation in case of infringement of rules.

7. All implements used in infringing any of the rules made in pursuance of this Act, and all timber or other forest-produce, removed or attempted to be removed, or marked, converted or cut up, contrary to such rules, shall be confiscated.

Arrest and seizure in case of infringement.

8. Any Police-officer or person employed as an officer of Government to prevent infringement of the rules made in pursuance of this Act may arrest any person infringing any of such rules, and may seize any implements used in such infringement, and any timber liable to confiscation under this Act.

Procedure on arrest.

9. Any person arrested on the ground that he has committed an infringement of such rules shall forthwith be taken before a Magistrate, who may, if he see reasonable cause, order such person to be detained in custody until the case shall have been disposed of.

Causing punishable act to be done similarly punishable.

10. Where the doing of any act is made punishable by this Act, or by any of the rules to be made in pursuance thereof, with any penalty, the causing or procuring such act to be done shall be punishable in like manner.

Procedure in respect of property seized as liable to confiscation.

11. When any timber or other property shall be seized as liable to confiscation under this Act, any Magistrate or officer empowered to enforce penalties under this Act within the district or division of a district wherein the same may be seized, may, upon information, summon the person in possession of such timber or other property,

and upon his appearance, or in default thereof, may examine into the cause of the seizure of such timber or other property, and may adjudge the same to be confiscated and sold on account of the Government.

Penalty for vexatious seizures and arrests.

12. Any Police-officer or officer of Government who shall vexatiously and unnecessarily seize the goods or chattels of any person under the pretence of seizing property liable to confiscation, or who shall vexatiously and unnecessarily arrest any person, or commit any other excess beyond what is required for the execution of his duty, shall be liable to a fine not exceeding five hundred rupees, or to imprisonment of either description as defined in the Indian Penal Code for a term not exceeding three months.

Enforcement of confiscations and penalties.

13. All fines and penalties under the rules made in pursuance of this Act shall be enforced by a Magistrate in the manner prescribed by the Code of Criminal Procedure,

and the rules therein contained for the trial of cases and for appeals shall be applicable to confiscations adjudged under this Act.

Property on confiscation to vest in Her Majesty.

14. When the confiscation of any property shall be adjudged under the last preceding section, the same shall thereupon belong to and vest in Her Majesty, and a warrant shall be issued by the Court to a Police-officer directing him to hold the property confiscated at the disposal of the Local Government.

Remission of penalties.

15. When any confiscation or penalty shall be adjudged under this Act, the Local Governments may, within three months after final judgment, call for the proceedings of the case, and, if they shall see cause, may direct that the seizure or any part thereof be restored, and may remit the penalty or part thereof, and direct that the offender be discharged.

Notice and limitation of proceedings under Act.

16. No suit or other proceeding shall be commenced against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended suit or other proceeding and of the cause thereof;

nor after the expiration of three months from the accrual of the cause of suit or other proceeding.[a]

Period within which charges to be brought.

17. No charge of an offence under this Act shall be instituted except within six months after the commission of such offence.

Extent of Act.

18. This Act shall extend to all the territories under the immediate administration of the Government of India and under the Governments of Bengal, the North-Western Provinces and the Panjáb;

and it shall be lawful for the Governors in Council of Madras and Bombay, respectively, by notification in the official Gazette, to extend this Act to the territories under their respective Governments.[b]

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[a] Repealed, so far as it relates to the limitation of suits, by Act No. IX of 1871.

[b] It has not been extended to either of the Presidencies of Madras and Bombay

19. This Act shall come into operation on the first day of May 1865, and may be cited as "The Government Forests' Act, 1865." Commencement. Short title.

# THE INDIAN SUCCESSION ACT, 1865.

## ARRANGEMENT OF SECTIONS.

### PART I.

PRELIMINARY.

SECTION.

1. Short title.
2. Act to constitute law of British India in cases of intestate or testamentary succession.
3. Interpretation-clause.
4. Interests and powers not acquired nor lost by marriage.

### PART II.

OF DOMICILE.

5. Law regulating succession to deceased person's immoveable and moveable property, respectively.
6. One domicile only affects succession to moveables.
7. Domicile of origin of person of legitimate birth.
8. Domicile of origin of illegitimate child.
9. Continuance of domicile of origin.
10. Acquisition of new domicile.
11. Special mode of acquiring domicile in British India.
12. Domicile not acquired by residence as representative of foreign Government, or as part of his family.
13. Continuance of new domicile.
14. Minor's domicile.
15. Domicile acquired by woman on marriage.
16. Wife's domicile during marriage.
17. Minor's acquisition of new domicile.
18. Lunatic's acquisition of new domicile.
19. Succession to moveable property in British India, in absence of proof of domicile elsewhere.

SECTION.

## PART III.

### OF CONSANGUINITY.

20. Kindred or consanguinity.
21. Lineal consanguinity.
22. Collateral consanguinity.
23. Persons held for purpose of succession to be similarly related to deceased.
24. Mode of computing degrees of kindred.

## PART IV.

### OF INTESTACY.

25. As to what property deceased considered to have died intestate.
26. Devolution of such property.
27. Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.
28. Where intestate has left no widow, and where he has left no kindred.

## PART V.

### OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY.

(*a*) *Where he has left lineal Descendants.*
29. Rules of distribution.
30. Where intestate has left child or children only.
31. Where intestate has left no child, but grandchild or grandchildren.
32. Where intestate has left only great-grandchildren or remoter lineal descendants.
33. Where intestate leaves lineal descendants not all in same degree of kindred to him, and those through whom the more remote descend are dead.
(*b*) *Where the Intestate has left no lineal Descendants.*
34. Rules of distribution where intestate has left no lineal descendants.
35. Where intestate's father living.
36. Where intestate's father dead, but his mother, brothers and sisters living.
37. Where intestate's father dead and his mother, a brother or sister, and children of any deceased brother or sister, living.
38. Where intestate's father dead and his mother and children of any deceased brother or sister living.

SECTION.

39. Where intestate's father dead, but his mother living and no brother nor sister nor nephew.
40. Where intestate has left neither lineal descendant, nor father nor mother.
41. Where intestate has left neither lineal descendant, nor parent, nor brother nor sister.
42. Children's advancements not brought into hotchpot.

## PART VI.

OF THE EFFECT OF MARRIAGE AND MARRIAGE-SETTLEMENTS ON PROPERTY.

43. Rights of widower and widow respectively.
44. Effect of marriage between person domiciled and one not domiciled in British India.
45. Settlement of minor's property in contemplation of marriage.

## PART VII.

OF WILLS AND CODICILS.

46. Persons capable of making wills.
47. Testamentary guardian.
48. Will obtained by fraud, coercion or importunity.
49. Will may be revoked or altered.

## PART VIII.

OF THE EXECUTION OF UNPRIVILEGED WILLS.

50. Execution of unprivileged wills.
51. Incorporation of papers by reference.

## PART IX.

OF PRIVILEGED WILLS.

52. Privileged will.
53. Mode of making, and rules for executing, privileged wills.

## PART X.

OF THE ATTESTATION, REVOCATION, ALTERATION AND REVIVAL OF WILLS.

54. Effect of gift to attesting witness.
55. Witness not disqualified by interest or by being executor.

SECTION.

56. Revocation of will by testator's marriage.
Power of appointment defined.
57. Revocation of unprivileged will or codicil.
58. Effect of obliteration, interlineation, or alteration in unprivileged will.
59. Revocation of privileged will or codicil.
60. Revival of unprivileged will.
Extent of revival of will or codicil partly revoked and afterwards wholly revoked.

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## PART XI.

### OF THE CONSTRUCTION OF WILLS.

61. Wording of will.
62. Enquiries to determine questions as to object or subject of will.
63. Misnomer or misdescription of object.
64. When words may be supplied.
65. Rejection of erroneous particulars in description of subject.
66. When part of description may not be rejected as erroneous.
67. Extrinsic evidence admissible in case of latent ambiguity.
68. Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.
69. Meaning of clause to be collected from entire will.
70. When words may be understood in restricted sense, and when in sense wider than usual.
71. Which of two possible constructions preferred.
72. No part rejected, if it can be reasonably construed.
73. Interpretation of words repeated in different parts of will.
74. Testator's intention to be effectuated as far as possible.
75. The last of two inconsistent clauses prevails.
76. Will or bequest void for uncertainty.
77. Words describing subject refer to property answering description at testator's death.
78. Power of appointment executed by general bequest.
79. Implied gift to objects of power in default of appointment.
80. Bequest to "heirs," &c., of particular person without qualifying terms.
81. Bequest to "representatives," &c., of particular person.
82. Bequest without words of limitation.
83. Bequest in alternative.

SECTION.

84. Effect of words describing a class added to bequest to a person.
85. Bequest to class of persons under general description only.
86. Construction of terms.
87. Words expressing relationship denote only legitimate relatives, or, failing such, relatives reputed legitimate.
88. Rules of construction where will purports to make two bequests to same person.
89. Constitution of residuary legatee.
90. Property to which residuary legatee entitled.
91. Time of vesting of legacy in general terms.
92. In what case legacy lapses.
93. Legacy does not lapse if one of two joint legatees die before testator.
94. Effect of words showing testator's intention to give distinct shares.
95. When lapsed share goes as undisposed of.
96. When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.
97. Bequest to A for benefit of B does not lapse by A's death.
98. Survivorship in case of bequest to described class.

## PART XII.

### OF VOID BEQUESTS.

99. Bequest to person by particular description, who is not in existence at testator's death.
100. Bequest to person not in existence at testator's death, subject to prior bequest.
101. Rule against perpetuity.
102. Bequest to a class, some of whom may come under rules in sections 100 and 101.
103. Bequest to take effect on failure of bequest void under section 100, 101 or 102.
104. Effect of direction for accumulation.
105. Bequest to religious or charitable uses.

## PART XIII.

### OF THE VESTING OF LEGACIES.

106. Date of vesting of legacy when payment or possession postponed.
107. Date of vesting when legacy contingent upon specified uncertain event.

SECTION.

108. Vesting of interest in bequest to such members of a class as shall have attained particular age.

## PART XIV.

### OF ONEROUS BEQUESTS.

109. Onerous bequest.

110. One of two separate and independent bequests to same person may be accepted, and other refused.

## PART XV.

### OF CONTINGENT BEQUESTS.

111. Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.

112. Bequest to such of certain persons as shall be surviving at some period not specified.

## PART XVI.

### OF CONDITIONAL BEQUESTS.

113. Bequest upon impossible condition.

114. Bequest upon illegal or immoral condition.

115. Fulfilment of condition precedent to vesting of legacy.

116. Bequest to A and, on failure of prior bequest, to B.

117. When second bequest not to take effect on failure of first.

118. Bequest over, conditional upon happening or not happening of specified uncertain event.

119. Condition must be strictly fulfilled.

120. Original bequest not affected by invalidity of second.

121. Bequest conditioned that it shall cease to have effect in case specified uncertain event shall happen or not happen.

122. Such condition must not be invalid under section 107.

123. Result of legatee rendering impossible or indefinitely postponing act for which no time specified and on non-performance of which subject-matter to go over.

124. Performance of condition, precedent or subsequent, within specified time.

Further time in case of fraud.

SECTION.

## PART XVII.

### OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.

125. Direction that funds be employed in particular manner following absolute bequest of same to or for benefit of any person.
126. Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.
127. Bequest of fund for certain purposes, some of which cannot be fulfilled.

## PART XVIII.

### OF BEQUESTS TO AN EXECUTOR.

128. Legatee named as executor cannot take unless he shows intention to act as executor.

## PART XIX.

### OF SPECIFIC LEGACIES.

129. Specific legacy defined.
130. Bequest of sum certain where stocks, &c., in which invested are described.
131. Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.
132. Bequest of money where not payable until part of testator's property disposed of in certain way.
133. When enumerated articles not deemed specifically bequeathed.
134. Retention, in form, of specific bequest to several persons in succession.
135. Sale and investment of proceeds of property bequeathed to two or more persons in succession.
136. Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

## PART XX.

### OF DEMONSTRATIVE LEGACIES.

137. Demonstrative legacy defined.
138. Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

SECTION.

## PART XXI.

### OF ADEMPTION OF LEGACIES.

139. Ademption explained.
140. Non-ademption of demonstrative legacy.
141. Ademption of specific bequest of right to receive something from third party.
142. Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.
143. Ademption *pro tanto* by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.
144. Order of paymant where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and testator having received portion of that fund, remainder insufficient to pay both legacies.
145. Ademption where stock, specifically bequeathed, does not exist at testator's death.
146. Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.
147. Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.
148. When removal of thing bequeathed does not constitute ademption.
149. When thing bequeathed is a valuable to be received by testator from third person; and testator himself, or his representative, receives it.
150. Change by operation of law of subject of specific bequest between date of will and testator's death.
151. Change of subject without testator's knowledge.
152. Stock specifically bequeathed, lent to third party on condition that it be replaced.
153. Stock specifically bequeathed, sold but replaced and belonging to testator at his death.

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## PART XXII.

### OF THE PAYMENT OF LIABILITIES IN RESPECT OF THE SUBJECT OF A BEQUEST.

154. Non-liability of executor to exonerate specific legatees.
155. Completion of testator's title to things bequeathed to be at cost of his estate.

SECTION.

156. Exoneration of legatee's immoveable property for which land-revenue or rent payable periodically.

157. Exoneration of specific legatee's stock in Joint Stock Company.

## PART XXIII.

### OF BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS.

158. Bequest of thing described in general terms.

## PART XXIV.

### OF BEQUESTS OF THE INTEREST OR PRODUCE OF A FUND.

159. Bequest of interest or produce of fund.

## PART XXV.

### OF BEQUESTS OF ANNUITIES.

160. Annuity created by will payable for life only, unless contrary intention appears by will.

161. Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.

162. Abatement of annuity.

163. Where gift of annuity, and residuary gift, whole annuity to be first satisfied.

## PART XXVI.

### OF LEGACIES TO CREDITORS AND PORTIONERS.

164. Creditor *primâ facie* entitled to legacy as well as debt.

165. Child *primâ facie* entitled to legacy as well as portion.

166. No ademption by subsequent provision for legatee.

## PART XXVII.

### OF ELECTION.

167. Circumstances in which election takes place.

168. Devolution of interest relinquished by owner.

169. Testator's belief as to his ownership immaterial.

SECTION.
170. Bequest for man's benefit how regarded for purpose of election.
171. Person deriving benefit indirectly not put to election.
172. Person taking in individual capacity under will, may in other character elect to take in opposition.
173. When acceptance of benefit given by will constitutes election to take under will.
174. Presumption arising from enjoyment by legatee for two years.
175. Confirmation of bequest by act of legatee.
176. When testator's representatives may call upon legatee to elect.
Effect of non-compliance.
177. Postponement of election in case of disability.

## PART XXVIII.

### OF GIFTS IN CONTEMPLATION OF DEATH.

178. Property transferable by gift made in contemplation of death.
When gift said to be made in contemplation of death.
Such gift resumable.
When it fails.

## PART XXIX.

### OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

179. Character and property of executor or administrator as such.
180. Administration with copy annexed of authenticated copy of will proved abroad.
181. Probate only to appointed executor.
182. Appointment express or implied.
183. Persons to whom probate cannot be granted.
184. Grant of probate to several executors simultaneously or at different times.
185. Separate probate of codicil discovered after grant of probate.
Procedure when different executors appointed by codicil.
186. Accrual of representation to surviving executor.
187. Right as executor or legatee when established.
188. Effect of probate.
189. To whom administration may not be granted.
190. Right to intestate's property when established.

SECTION.

191. Effect of letters of administration.
192. Acts not validated by administration.
193. Grant of administration where executor has not renounced.
Exception.
194. Form and effect of renunciation of executorship.
195. Procedure where executor renounces or fails to accept within time limited.
196. Grant of administration to universal or residuary legatee.
197. Right to administration of representative of deceased residuary legatee.
198. Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.
199. Citation before grant of adminstration to legatee other than universal or residuary.
200. Order in which connections entitled to administer.
201. Administration to widow unless Court see cause to exclude her.
202. Association with widow in administration.
203. Administration where no widow, or widow excluded.
Proviso.
204. Title of kindred to administration.
205. Right of widower to administration of wife's estate.
206. Grant of administration to creditor.
207. Administration where property left in British India.

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## PART XXX.

### OF LIMITED GRANTS.

(*a*). *Grants limited in Duration.*

208. Probate of copy or draft of lost will.
209. Probate of contents of lost or destroyed will.
210. Probate of copy where original exists.
211. Administration until will produced.

(*b*). *Grants for the Use and Benefit of Others having Right.*

212. Administration, with will annexed, to attorney of absent executor.
213. Administration, with will annexed, to attorney of absent person, who, if present, would be entitled to administer.

SECTION.

214. Administration to attorney of absent person entitled to administer in case of intestacy.
215. Administration during minority of sole executor or residuary legatee.
216. Administration during minority of several executors or residuary legatees.
217. Administration for use and benefit of lunatic *jus habens.*
218. Administration *pendente lite.*

(*c*). *For Special Purposes.*

219. Probate limited to purpose specified in will.
220. Administration with will annexed limited to particular purpose.
221. Administration limited to property in which person has beneficial interest.
222. Administration limited to suit.
223. Administration limited to purpose of becoming party to suit to be brought against administrator.
224. Administration limited to collection and preservation of deceased's property.
225. Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

(*d.*) *Grants with Exception.*

226. Probate or administration with will annexed, subject to exception.
227. Administration with exception.

(*e.*) *Grants of the Rest.*

228. Probate or administration of rest.

(*f.*) *Grants of Effects unadministered.*

229. Grant of effects unadministered.
230. Rules as to grants of effects unadministered.
231. Administration when limited grant expired, and still some part of estate unadministered.

(*g*). *Alteration in Grants.*

232. What errors may be rectified by Court.
233. Procedure where codicil discovered after grant of administration with will annexed.

(*h*). *Revocation of Grants.*

234. Revocation or annulment for just cause.
Just cause.

SECTION.

## PART XXXI.

### OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

235. Jurisdiction of District Judge in granting and revoking probates, &c.
236. District Judge's powers as to grant of probate and administration.
237. District Judge may order person to produce testamentary papers.
238. Proceedings of District Judge's Court in relation to probate and administration.
239. When and how District Judge to interfere for protection of property.
240. When probate or administration may be granted by District Judge.
241. Disposal of application made to Judge of district in which deceased had no fixed abode.
242. Conclusiveness of probate or letters of administration.
Effect of unlimited probates, &c., granted by High Court.
242A. Transmission of certificate by High Court granting probate, &c., to other Courts.
243. Conclusiveness of application for probate or administration, if properly made and verified.
244. Petition for probate.
245. In what cases translation of will to be annexed to petition.
Verification of translation by person other than Court translator.
246. Petition for letters of administration.
246A. Additional statements in petition for probate, &c.
247. Petition for probate or administration to be signed and verified.
248. Verification of petition for probate, by one witness to will.
249. Punishment for false averment in petition or declaration.
250. District Judge may examine petitioner in person, require further evidence, and issue citations to inspect proceedings.
Publication of citation.
251. Caveat against grant of probate or administration.
252. Form of caveat.
253. After entry of caveat, no proceeding taken on petition until after notice to caveator.
254. Grant of probate to be under seal of Court.
Form of such grant.

SECTION.

255. Grant of letters of administration to be under seal of Court.
Form of such grant.
256. Administration-bond.
257. Assignment of administration-bond.
258. Time for grant of probate and administration.
259. Filing of original wills of which probate or administration with will annexed granted.
260. Grantee of probate or administration alone to sue, &c., until same revoked.
261. Procedure in contentious cases.
262. Payment to executor or administrator before probate or administration revoked.
Right of such executor or administrator to recoup himself.
263. Appeals from orders of District Judge.
264. Concurrent jurisdiction of High Court.

## PART XXXII.

### OF EXECUTORS OF THEIR OWN WRONG.

265. Executor of his own wrong.
266. Liability of executor of his own wrong.

## PART XXXIII.

### OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

267. In respect of causes of action surviving deceased, and rents due at death.
268. Demands and rights of action of or against deceased, survive to and against executor or administrator.
269. Power of executor or administrator to dispose of property.
270. Purchase by executor or administrator of deceased's property.
271. Powers of several executors or administrators, exerciseable by one.
272. Survival of powers on death of one of several executors or administrators.
273. Powers of administrator of effects unadministered.
274. Powers of administrator during minority.
275. Powers of married executrix or administratrix.

SECTION.

## PART XXXIV.

### OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

276. As to deceased's funeral.
277. Inventory and account.
277A. Inventory to include property in any part of British India.
278. As to property of, and debts owing to, deceased.
279. Expenses to be paid before all debts.
280. Expenses to be paid next after such expenses.
281. Wages for certain services to be next paid, and then other debts.
282. Save as aforesaid, all debts to be paid equally and rateably.
283. Application of moveable property to payment of debts, where domicile not in British India.
284. Creditor paid in part under section 283 to bring payment into account before sharing in proceeds of immoveable property.
285. Debts to be paid before legacies.
286. Executor or administrator not bound to pay legacies without indemnity.
287. Abatement of general legacies.
Executor not to pay one legatee in preference to another.
288. Non-abatement of specific legacy when assets sufficient to pay debts.
289. Right under demonstrative legacy, when assets sufficient to pay debts and necessary expenses.
290. Rateable abatement of specific legacies.
291. Legacies treated as general for purpose of abatement.

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## PART XXXV.

### OF THE EXECUTOR'S ASSENT TO A LEGACY.

292. Assent necessary to complete legatee's title.
293. Effect of executor's assent to specific legacy.
Nature of assent.
294. Conditional assent.
295. Assent of executor to his own legacy.
Implied assent.
296. Effect of executor's assent.
297. Executor when to deliver legacies.

SECTION.

## PART XXXVI.

### OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

298. Commencement of annuity when no time fixed by will.
299. When annuity, to be paid quarterly or monthly, first falls due.
300. Dates of successive payments when first payment directed to be made within given time, or on day certain.
Apportionment where annuitant dies between times of payment.

## PART XXXVII.

### OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

301. Investment of sum bequeathed where legacy, not specific, given for life.
302. Investment of general legacy, to be paid at future time.
Intermediate interest.
303. Procedure when no fund charged with, or appropriated to, annuity.
304. Transfer to residuary legatee of contingent bequest.
305. Investment of residue bequeathed for life, without direction to invest in particular securities.
306. Investment of residue bequeathed for life, with direction to invest in specified securities.
307. Time and manner of conversion and investment.
Interest payable until investment.
308 Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

## PART XXXVIII.

### OF THE PRODUCE AND INTEREST OF LEGACIES.

309. Legatee's title to produce of specific legacy.
310. Residuary legatee's title to produce of residuary fund.
311. Interest when no time fixed for payment of general legacy.
312. Interest when time fixed.
313. Rate of interest.
314. No interest on arrears of annuity within first year after testator's death.
315. Interest on sum to be invested to produce annuity.

SECTION.

## PART XXXIX.

### OF THE REFUNDING OF LEGACIES.

316. Refund of legacy paid under Judge's orders.
317. No refund if paid voluntarily.
318. Refund when legacy become due on performance of condition within further time allowed under section 124.
319. When each legatee compellable to refund in proportion.
320. Distribution of assets.
Creditor may follow assets.
321. Within what period creditor may call upon legatee to refund.
322. When legatee not satisfied or compelled to refund under section 321, cannot oblige one paid in full to refund.
323. When unsatisfied legatee must first proceed against executor, if solvent.
324. Limit to refunding of one legatee to another.
325. Refunding to be without interest.
326. Residue after usual payments to be paid to residuary legatee.

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## PART XL.

### OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

327. Liability of executor or administrator for devastation.
328. For neglect to get in any part of property.

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## PART XLI.

### MISCELLANEOUS.

329, 330. [*Repealed.*]
331. Succession to property of Hindús, &c., and certain wills, intestacies and marriages not affected.
332. Power of Governor General to exempt any race, sect or tribe in British India from operation of Act.

ACT No. X of 1865.[a]

*Received the Governor-General's assent on the 16th March 1865.*

# An Act to amend and define the Law of Intestate and Testamentary Succession in British India.

Preamble.

WHEREAS it is expedient to amend and define the rules of law applicable to Intestate and Testamentary Succession in British India; It is enacted as follows:—

## PART I.

### PRELIMINARY.

Short title.

1. This Act may be cited as "The Indian Succession Act, 1865."

Act to constitute law of British India in cases of intestate or testamentary succession.

2. Except as provided by this Act or by any other law for the time being in force, the rules herein contained shall constitute the law of British India applicable to all cases of intestate or testamentary succession.[b]

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context—

Number. Gender.

Words importing the singular number include the plural: words importing the plural number include the singular; and words importing the male sex include females:

"Person."

"Person" includes any company or association, or body of persons, whether incorporated or not:

"Year." "Month."

"Year" and "Month" respectively mean a year and month reckoned according to the British calendar:

"Immoveable property."

"Immoveable property" includes land, incorporeal tenements and things attached to the earth, or permanently fastened to anything which is attached to the earth:

"Moveable property."

"Moveable property" means property of every description except immoveable property:

"Province."

"Province" includes any division of British India having a Court of the last resort:

"British India."

"British India" means the territories which are or may become vested in Her Majesty or her successors by the Statute 21 & 22 Vic., cap. 106 (*An Act for the better government of India*) other than the Settlement of Prince of Wales' Island, Singapore and Malacca:

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[a] As to the exemption of Pársís from portions of the Succession Act, see Act No. XXI of 1865, section 8. As to the application of portions of the Succession Act to the wills of Hindús, Jainas, Sikhs and Buddhists in the Lower Provinces and in the towns of Madras and Bombay, see Act No. XXI of 1870.

[b] See. 12 Beng. 427.

"District Judge" means the Judge of a principal civil Court of original jurisdiction: "District Judge."

"Minor"[a] means any person who shall not have completed the age of eighteen years, and "minority" means the status of such person: "Minor," "Minority."

"Will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death: "Will."

"Codicil" means an instrument made in relation to a will, and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the will: "Codicil."

"Probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator: "Probate."

"Executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided: "Executor."

"Administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor: "Administrator."

And in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer executive government in such part; and "Local Government."

"High Court" shall mean the highest civil Court of appeal therein, and for the purposes of sections 242, 242 A, 246 A and 277 A, shall include the Court of the Recorder of Rangoon.[b] "High Court."

4. No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried.[c] Interests and powers not acquired nor lost by marriage.

## PART II.

### Of Domicile.

5. Succession to the immoveable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death. Law regulating succession to deceased person's immoveable and moveable property, respectively.

Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

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[a] See 1 Beng., O. C. J., 13: Act No. IX of 1875, section 3.

[b] See Act No. XIII of 1875, sec. 1.

[c] See 8 Beng. 372. "This section shall not apply, and shall be deemed never to have applied, to any marriage, one or both of the parties to which professed at the time of the marriage the Hindú, Muhammadan, Buddhist, Síkh or Jaina religion," Act No. III of 1874, sec. 2, last para.

*Illustrations.*

(*a.*) A, having his domicile in British India, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immoveable, in British India. The succession to the whole is regulated by the law of British India.

(*b*) A, an Englishman, having his domicile in France, dies in British India, and leaves property, both moveable and immoveable, in British India. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immoveable property is regulated by the law of British India.

One domicile only affects succession to moveables.

**6.** A person can only have one domicile for the purpose of succession to his moveable property.

Domicile of origin of person of legitimate birth.

**7.** The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled: or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

*Illustration.*

At the time of the birth of A, his father was domiciled in Engalnd. A's domicile of origin is in England, whatever may be the country in which he was born.

Domicile of origin of illegitimate child.

**8.** The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

Continuance of domicile of origin.

**9.** The domicile of origin prevails until a new domicile has been acquired.

Acquisition of new domicile.

**10.** A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

*Explanation.*—A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's civil or military service, or in the exercise of any profession or calling.

*Illustrations.*

(*a*) A, whose domicile of origin is in England, proceeds to British India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

(*b*) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A has acquired a domicile in Austria.

(*c*) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the British Indian Government for a certain number of

years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(*d*) A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not by such residence acquire a domicile in British India, however long the residence may last.

(*e*) A, having gone to reside in British India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(*f*) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in British India.

(*g*) A, having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A has acquired a domicile in British India.

Special mode of acquiring domicile in British India.

**11.** Any person may acquire a domicile in British India by making and depositing in some office in British India (to be fixed by the Local Government)[a] a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration.

Domicile not acquired by residence as representative of foreign Government, or as part of his family.

**12.** A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country, does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as part of his family or as a servant.

Continuance of new domicile.

**13.** A new domicile continues until the former domicile has been resumed, or another has been acquired.

Minor's domicile.

**14.** The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

*Exception.*—The domicile of a minor does not change with that of his parent, if the minor is married or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent, in any distinct business.

Domicile acquired by woman on marriage.

**15.** By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

[a] See, as to Oudh, *Gazette of India*, 15th July 1865, p. 813; as to British Burma, *ibid.*, 29th July 1865, p. 845.

Wife's domicile during marriage.

16. The wife's domicile during the marriage follows the domicile of her husband.

*Exception.*—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

Minor's acquisition of new domicile.

17. Except in the cases above provided for, a person cannot during minority acquire a new domicile.

Lunatic's acquisition of new domicile.

18. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

Succession to moveable property in British India, in absence of proof of domicile elsewhere.

19. If a man dies leaving moveable property in British India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India.

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## PART III.

### Of Consanguinity.

Kindred or consanguinity.

20. Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor.

Lineal consanguinity.

21. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather, and great-grandfather, and so upwards in the direct ascending line; or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line.

Every generation constitutes a degree, either ascending or descending.

A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

Collateral consanguinity.

22. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

Persons held for purpose of succession to be similarly related to deceased.

23. For the purpose of succession, there is no distinction between those who are related to a person deceased through his father and those who are related to him through his mother;

nor between those who are related to him by the full blood, and those who are related to him by the half blood;

nor between those who were actually born in his lifetime, and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

**24.** In the annexed table of kindred the degrees are computed as far as the sixth, and are marked by numeral figures.

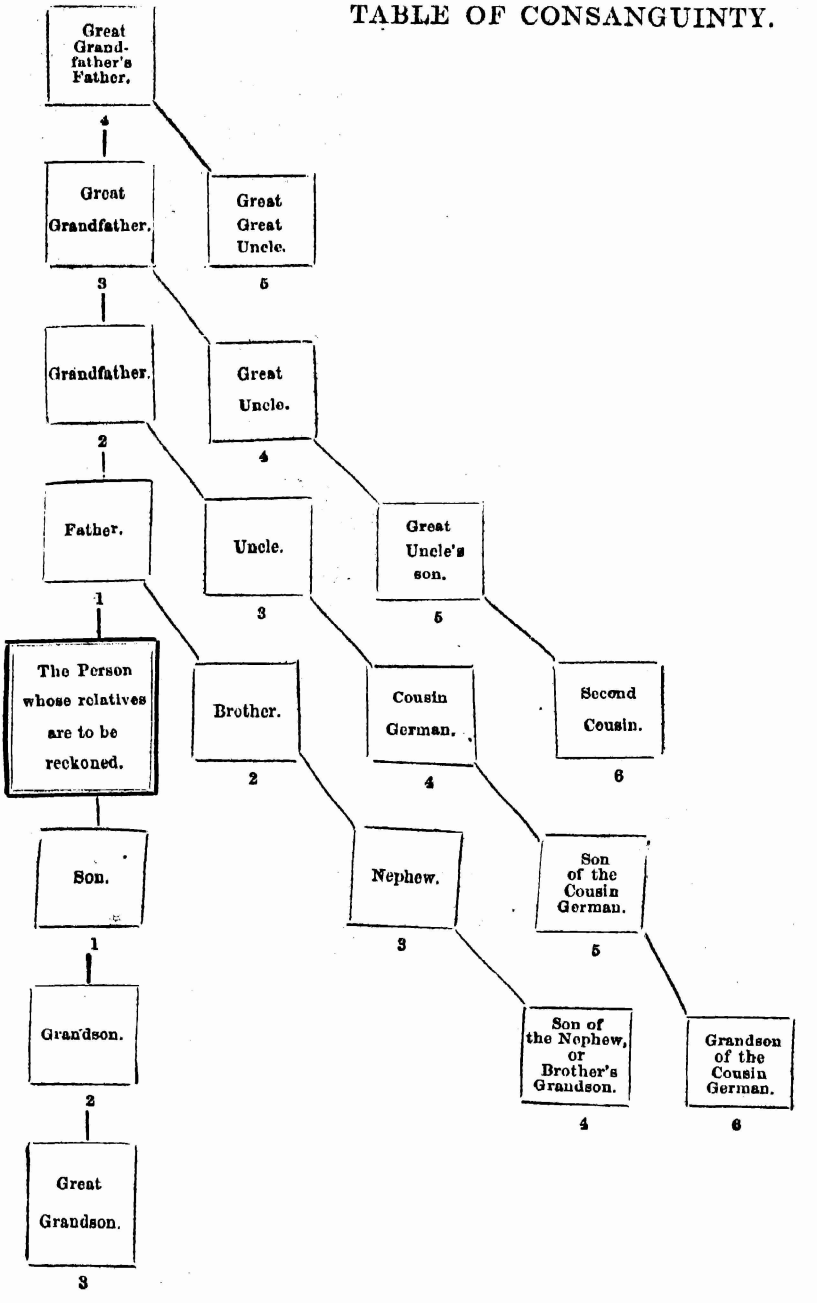
Mode of computing degrees of kindred.

The person whose relatives are to be reckoned, and his cousin-german, or first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor the grandfather; and from him one of descent to the uncle, and another to the cousin-german; making in all four degrees.

A grandson of the brother and a son of the uncle, *i. e.*, a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.

A grandson of a cousin-german is in the same degree as the grandson of a great-uncle, for they are both in the sixth degree of kindred.

## TABLE OF CONSANGUINTY.



## PART IV.

### Of Intestacy.

**25.** A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

As to what property deceased considered to have died intestate.

*Illustrations.*

(*a*) A has left no will. He has died intestate in respect of the whole of his property.

(*b*) A has left a will, whereby he has appointed B his executor; but the will contains no other provisions. A has died intestate in respect of the distribution of his property.

(*c*) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(*d*) A has bequeathed 1,000*l* to B, and 1,000*l* to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000*l* and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000*l*.

**26.** Such property devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules herein prescribed.

Devolution of such property.

*Explanation.*—The widow is not entitled to the provision hereby made for her, if by a valid contract made before her marriage she has been excluded from her distributive share of her husband's estate.

**27.** Where the intestate has left a widow, if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein contained.

Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.

If he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him, in the order and according to the rules herein contained.

If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

**28.** Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained: and if he has left none who are of kindred to him, it shall go to the Crown.

Where intestate has left no widow, and where he has left no kindred.

## PART V.

### Of the Distribution of an Intestate's Property.

*(a) Where he has left lineal Descendants.*

Rules of distribution.

**29.** The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants are as follows:—

Where intestate has left child or children only.

**30.** Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there be only one, or shall be equally divided among all his surviving children.

Where intestate has left no child, but grandchild or grandchildren.

**31.** Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild, if there be only one, or shall be equally divided among all his surviving grandchildren.

*Illustrations.*

(*a*) A has three children, and no more; John, Mary, and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grandchildren shall have one-ninth.

(*b*) But if Henry has died leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

(*c*) A has two children, and no more; John and Mary. John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and such posthumous child.

Where intestate has left only great-grandchildren or remoter lineal descendants.

**32.** In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

Where intestate leaves lineal descendants not all in same degree of kindred to him and those through whom the more remote descend are dead.

**33.** If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him; and

one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and

one of such shares shall be allotted in respect of each of such deceased lineal descendants; and

the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

*Illustrations.*

(*a*) A had three children, John, Mary, and Henry; John died, leaving four children, and Mary died, leaving one, and Henry alone survived the father. On the death of A intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(*b*) A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild; and the remaining one-ninth is equally divided between the two great-grandchildren.

(*c*) A has three children, John, Mary, and Henry. John dies leaving four children, and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate. One-third of his property is allotted to Henry; one-third to Mary's child; and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

(*b*) *Where the Intestate has left no lineal Descendants.*

**34.** Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) are as follows:— Rules of distribution where intestate has left no lineal descendants.

**35.** If the intestate's father be living, he shall succeed to the property. Where intestate's father living.

**36.** If the intestate's father is dead, but the intestate's mother is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares. Where intestate's father dead but his mother, brothers and sisters living

*Illustration.*

A dies intestate, survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother, but not

of his father. The mother takes one-fourth, each brother takes one-fourth, and Mary, the sister of half blood, takes one-fourth.

Where intestate's father dead and his mother, a brother or sister, and children of any deceased brother or sister, living.

**37.** If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister, and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

*Illustration.*

A, the intestate, leaves his mother, his brothers John and Henry, and also one child of a deceased sister Mary, and two children of George, a deceased brother of the half blood, who was the son of his father but not of his mother. The mother takes one-fifth, John and Henry each take one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

Where intestate's father dead and his mother and children of any deceased brother or sister living.

**38.** If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

*Illustration.*

A, the intestate, leaves no brother or sister, but leaves his mother and one child of a deceased sister Mary, and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third, and the children of George divide the remaining one-third equally between them.

Where intestate's father dead, but his mother living and no brother nor sister nor nephew.

**39.** If the intestate's father is dead, but the intestate's mother is living, and there is neither brother nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

Where intestate has left neither lineal descendant nor father nor mother.

**40.** Where the intestate has left neither lineal descendant nor father nor mother, the property is divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate has left neither lineal descendant, nor parent, nor brother nor sister.

**41.** If the intestate left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

*Illustrations.*

(*a*) A, the intestate, has left a grandfather and a grandmother, and no other relative standing in the same or a nearer degree of kindred to him. They, being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(*b*) A, the intestate, has left a great-grandfather, or great-grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(*c*) A, the intestate, left a great-grandfather, an uncle, and a nephew, but no relative standing in a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(*d*) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They shall each take one-eleventh of the property.

Children's advancements not brought into hotchpot.

**42.** Where a distributive share in the property of a person who has died intestate shall be claimed by a child, or any descendant of a child, of such person, no money or other property which the intestate may during his life have paid, given, or settled to or for the advancement of the child by whom or by whose descendant the claim is made, shall be taken into account in estimating such distributive share.

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## PART VI.

### Of the Effect of Marriage and Marriage-settlements on Property.

Rights of widower and widow respectively.

**43.** The husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband's property, if he die intestate.

Effect of marriage between person domiciled and one not domiciled in British India.

**44.** If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

Settlement of minor's property in contemplation of marriage.

**45.** The property of a minor may be settled in contemplation of marriage, provided the settlement be made by the minor with the approbation of the minor's father, or, if he be dead or absent from British India, with the approbation of the High Court.

## PART VII.[a]

### Of Wills and Codicils.

Persons capable of making wills.

**46.** Every person of sound mind and not a minor may dispose of his property by will.

*Explanation* 1.—A married woman may dispose by will of any property which she could alienate by her own act during her life.

*Explanation* 2.—Persons who are deaf, or dumb, or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

*Explanation* 3.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

*Explanation* 4.—No person can make a will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

*Illustrations.*

(*a*) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

(*b*) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument nor the effect of its provisions. This instrument is not a valid will.

(*c*) A being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will. This is a valid will.

Testamentary guardian.

**47.** A father, whatever his age may be, may by will appoint a guardian or guardians for his child during minority.

Will obtained by fraud, coercion or importunity.

**48.** A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

*Illustrations.*

(*a*) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a will in his, A's favour; such will has been obtained by fraud, and is invalid.

(*b*) A by fraud and deception prevails upon the testator to bequeath a legacy to him. The bequest is void.

(*c*) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

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[a] Of this Part, sections, 46, 48 and 49 extend to the wills of Hindús, Jainas, Síkhs and Buddhists in the Lower Provinces and the towns of Madras and Bombay, Act No. XXI of 1870.

(*d*) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(*e*) A being of sufficient intellect, if undisturbed by the influence of others, to make a will, yet being so much under the control of B that he is not a free agent, makes a will dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid.

(*f*) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport, and does so merely to purchase peace, and in submission to B. The will is invalid.

(*g*) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

(*h*) A with a view to obtaining a legacy from B, pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

**Will may be revoked or altered.**

**49.** A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.

## PART VIII.[a]

### Of the Execution of unprivileged Wills.

**Execution of unprivileged wills.**

**50.** Every testator, not being a soldier employed in an expedition, or engaged in actual warfare, or a mariner at sea, must execute his will according to the following rules:—

*First.*—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

*Second.*—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

*Third.*—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and

[a] This Part extends to the wills of Hindús, &c., in the Lower Provinces and the towns of Madras and Bombay.

each of the witnesses must sign the will in the presence of the testator,[a] but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Incorporation of papers by reference.

**51.** If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.

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## PART IX.

### Of Privileged Wills.

Privileged will.

**52.** Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made as is mentioned in the fifty-third section.

Such wills are called privileged wills.

*Illustrations.*

(*a*) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(*b*) A is at sea in a merchant-ship, of which he is the purser. He is a mariner, and being at sea can make a privileged will.

(*c*) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(*d*) A, a mariner of a ship in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged will.

(*e*) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

(*f*) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

Mode of making, and rules for executing, privileged wills.

**53.** Privileged wills may be in writing, or may be made by word of mouth.

The execution of them shall be governed by the following rules :—

*First.*—The will may be written wholly by the testator, with his own hand. In such case it need not be signed nor attested.

*Second.*—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

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[a] 3 N. W. P. 35.

*Third.*—If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will, if it be shown that it was written by the testator's directions, or that he recognized it as his will.

If it appear on the face of the instrument that the execution of it in the manner intended by him was not completed, the instrument shall not by reason of that circumstance be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

*Fourth.*—If the soldier or mariner shall have written instructions for the preparation of his will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his will.

*Fifth.*—If the soldier or mariner shall, in the presence of two witnesses, have given verbal instructions for the preparation of his will, and they shall have been reduced into writing in his lifetime, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

*Sixth.*—Such soldier or mariner as aforesaid may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

*Seventh.*—A will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged will.

## PART X.

### Of the Attestation, Revocation, Alteration and Revival of Wills.

Effect of gift to attesting witness.

**54.** A will shall not be considered as insufficiently attested by reason of any benefit thereby given, either by way of bequest or by way of appointment, to any person attesting it, or to his or her wife or husband:

but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

*Explanation.*—A legatee under a will does not lose his legacy by attesting a codicil which confirms the will.

Witness not disqualified by interest or by being executor.

**55.** No person, by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.[a]

[a] This section, and sections 57—60 (both inclusive), extend to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay, Act No. XXI of 1870.

Revocation of will by testator's marriage.

**56.** Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy.

Power of appointment defined.

*Explanation.*—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

Revocation of unprivileged will or codicil.

**57.** No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

*Illustrations.*

(*a*). A has made an unprivileged will; afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(*b*). A has made an unprivileged will. Afterwards, A being entitled to make a privileged will, makes a privileged will, which purports to revoke his unprivileged will. This is a revocation.

Effect of obliteration, interlineation, or alteration in unprivileged will.

**58.** No obliteration, interlineation, or other alteration made in any unprivileged will after the execution thereof shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Revocation of privileged will or codicil.

**59.** A privileged will or codicil may be revoked by the testator, by an unprivileged will or codicil, or by any act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

*Explanation.*—In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give

validity to a privileged will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged will.

**60.** No unprivileged will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; **Revival of unprivileged will.**

and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil. **Extent of revival of will or codicil partly revoked and afterwards wholly revoked.**

## PART XI.

### Of the Construction of Wills.[a]

**61.** It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator can be known therefrom. **Wording of will.**

**62.** For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court must inquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used. **Enquiries to determine questions as to object or subject of will.**

*Illustrations.*

(*a*) A, by his will, bequeaths 1,000 rupees to his eldest son,[b] or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the will applies.

(*b*) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(*c*) A, by his will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

**63.** Where the words used in the will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect. **Misnomer or misdescription of object.**

[a] Of this Part, secs. 61—77 (both inclusive), apply to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay, Act No. XXI of 1870.

[b] See Act No. XXI of 1870, sec. 6.

A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

*Illustrations.*

(*a*) A bequeaths a legacy "to Thomas, the second son[a] of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(*b*) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(*c*) The testator bequeaths his property "to A and B, the legitimate children[a] of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(*d*) The testator gives his residuary estate to be divided among "his seven children,[a]" and proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(*e*) The testator having six grandchildren,[a] makes a bequest to "his six grandchildren," and proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(*f*) The testator bequeaths "1,000 rupees to each of the three children[a] of A." At the date of the will, A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

When words may be supplied.

**64.** Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

*Illustration.*

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

Rejection of erroneous particulars in description of subject.

**65.** If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

*Illustrations.*

(*a*) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, but had no marsh-lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh-lands of the testator lying in L shall pass by the bequest.

[a] See Act No. XXI of 1870, sec. 6.

(*b*) The testator bequeaths to A "his zamíndárí of Rámpúr." He had an estate at Rámpúr, but it was a táluq and not a zamíndárí. The táluq passes by this bequest.

When part of description may not be rejected as erroneous.

**66.** If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

*Explanation.*—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under the sixty-fifth section are to be considered as struck out of the will.

*Illustrations.*

(*a*) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh-lands lying in L as were in the occupation of X.

(*b*) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X, comprising 1,000 bíghás of land." The testator had marsh-lands lying in L, some of which were in the occupation of X and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh-lands lying in L, as were in the occupation of X, shall alone pass by the bequest.

Extrinsic evidence admissible in case of latent ambiguity.

**67.** Where the words of the will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

*Illustrations.*

(*a*) A man having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons, each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(*b*) A, by his will, leaves to B "his estate called Sultánpur Khurd." It turns out that he had two estates called Sultánpur Khurd. Evidence is admissible to show which estate was intended.

Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.

**68.** Where there is an ambiguity or deficiency on the face of the will, no extrinsic evidence as to the intentions of the testator shall be admitted.

*Illustrations.*

(*a*) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees to "his cousin Mary," and afterwards bequeaths 2,000 rupees to "his before-mentioned aunt Mary". There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under the seventy-sixth section.

(*b*) A bequeaths 1,000 rupees to , leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(*c*) A bequeaths to B rupees, or "his estate of ." Evidence is not admissible to show what sum or what estate the testator intended to insert.

Meaning of clause to be collected from entire will.

**69.** The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a codicil is to be considered as part of the will.

*Illustrations.*

(*a*) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

(*b*) Where a testator, having an estate one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first, as if he had said, "I give Black Acre to B, and all the rest of my estate to A."

When words may be understood in restricted sense, and when in sense wider than usual.

**70.** General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

*Illustrations.*

(*a*) A testator gives to A "his farm in the occupation of B," and to C "all his marsh-lands in L." Part of the farm in the occupation of B consists of marsh-lands

in L, and the testator also has other marsh-lands in L. The general words, "all his marsh-lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh-lands in L.

(*b*) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons, and chest of clothes, and to his friend A (a shipmate) his red box, clasp-knife, and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(*c*) A, by his will, bequeathed to B all his household-furniture, plate, linen, china, books, pictures, and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest, B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

Which of two possible constructions preferred.

**71.** Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

No part rejected, if it can be reasonably construed.

**72.** No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

Interpretation of words repeated in different parts of will.

**73.** If the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

Testator's intention to be effectuated as far as possible.

**74.** The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

*Illustration.*

The testator by a will made on his death-bed bequeathed all his property to C D for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under the hundred and fifth section, but it shall take effect so far as regards the gift to C D.

The last of two inconsistent clauses prevails.

**75.** Where two clauses or gifts in a will are irreconcileable, so that they cannot possibly stand together, the last shall prevail.

*Illustrations.*

(*a*) The testator by the first clause of his will leaves his estate of Rámnagar "to A," and by the last clause of his will leaves it "to B and not to A." B shall have it.

(*b*) If a man at the commencement of his will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition shall prevail.

Will or bequest void for uncertainty.

76. A will or bequest not expressive of any definite intention is void for uncertainty.

*Illustration.*

If a testator says—"I bequeath goods to A;" or "I bequeath to A;" or "I leave to A all the goods mentioned in a schedule," and no schedule is found; or "I bequeath 'money,' 'wheat,' 'oil,'" or the like, without saying how much, this is void.

Words describing subject refer to property answering description at testator's death.

77. The description contained in a will, of property the subject of gift, shall, unless a contrary intention appear by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

Power of appointment executed by general bequest.

78. Unless a contrary intention shall appear by the will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power;

and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

Implied gift to objects of power in default of appointment.

79. Where property is bequeathed to or for the benefit of such of certain objects as a specified person shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint; and the will does not provide for the event of no appointment being made; if the power given by the will be not exercised, the property belongs to all the objects of the power in equal shares.

*Illustration.*

A, by his will, bequeaths a fund to his wife for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund shall be divided equally among the children.

Bequest to "heirs," &c., of particular person without qualifying terms.

80. Where a bequest is made to the "heirs," or "right heirs," or "relations," or "nearest relations," or "family," or "kindred," or "nearest of kin," or "next-of-kin," of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

*Illustrations.*

(*a*) A leaves his property "to his own nearest relations." The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(*b*) A bequeaths 10,000 rupees "to B for his life and after the death of B, to his own right heirs." The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property.

(*c*) A leaves his property to B; but if B dies before him, to B's next-of-kin: B dies before A; the property devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts independently of such property.

(*d*) A leaves 10,000 rupees "to B for his life, and after his decease, to the heirs of C." The legacy goes as if it had belonged to C, and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

Bequest to "representatives," &c., of particular person.

**81.** Where a bequest is made to the "representatives," or "legal representatives," or "personal representatives," or "executors or administrators" of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it.

*Illustration.*

A bequest is made to the "legal representatives" of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid: if there be any surplus, B shall pay it to those persons who at A's death would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

Bequest without words of limitation.

**82.** Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him. [a]

Bequest in alternative.

**83.** Where property is bequeathed to a person, with a bequest in the alternative to another person or to a class of persons; if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy, if he be alive at the time when it takes effect; but if he be then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

*Illustrations.*

(*a*) A bequest is made to A or to B. A survives the testator. B takes nothing.

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[a] This section, and sections 83 and 85, apply to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay, Act No. XXI of 1870.

(*b*) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B.

(*c*) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(*d*) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(*e*) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.

(*f*) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.

(*g*) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death the bequest to the heirs of B takes effect.

Effect of words describing a class added to bequest to a person.

**84.** Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will.

*Illustrations.*

(*a*) A bequest is made—

to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants,
to A and his representatives,
to A and his personal representatives,
to A, his executors and administrators.

In each of these cases, A takes the whole interest which the testator had in the property.

(*b*) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

(*c*) A bequest is made to A for life, and after his death to his issue. At the death of A the property belongs in equal shares to all persons who shall then answer the description of issue of A.

**85.** Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

Bequest to class of persons under general description only.

**86.** The word "children" in a will applies only to lineal descendants in the first degree;

Construction of terms.

the word "grandchildren" applies only to lineal descendants in the second degree of the person whose "children," or "grandchildren," are spoken of;

the words "nephews" and "nieces" apply only to children of brothers or sisters;

the words "cousins," or "first cousins," or "cousins-german" apply only to children of brothers or of sisters of the father or mother of the person whose "cousins," or "first cousins," or "cousins-german," are spoken of;

the words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent, of the person whose "first cousins once removed" are spoken of;

the words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of;

the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of.

Words expressive of collateral relationship apply alike to relatives of full and of half blood.

All words expressive of relationship apply to a child in the womb who is afterwards born alive.

**87.** In the absence of any intimation to the contrary in the will, the term "child," "son," or "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or where there is no such legitimate relative, a person who has acquired, at the date of the will, the reputation of being such relative.

Words expressing relationship denote only legitimate relatives, or, failing such, relatives reputed legitimate.

*Illustrations.*

(*a*) A, having three children, B, C and D, of whom B and C are legitimate and D is illegitimate, leaves his property to be equally divided among "his children." The property belongs to B and C in equal shares, to the exclusion of D.

(*b*) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(*c*) A, having in his will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to "his said children." B will take a share in the legacy along with the legitimate children.

(*d*) A leaves a legacy to the "children of B." B is dead, and has left none but illegitimate children. All those who had, at the date of the will, acquired the reputation of being the children of B are objects of the gift.

(*e*) A bequeathed a legacy to "the children of B." B never had any legitimate child. C and D had, at the date of the will, acquired the reputation of being children of B. After the date of the will, and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(*f*) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired, at the date of the will, the reputation of being the child of A by the woman designated. B takes the legacy.

(*g*) A makes a bequest in favour of his child to be born of a woman, who never becomes his wife. The bequest is void.

(*h*) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

Rules of construction where will purports to make two bequests to same person.

**88.** Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the will to show what he intended, the following rules shall prevail in determining the construction to be put upon the will :—

*First.*—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will and again in a codicil, he is entitled to receive that specific thing only.

*Second.*—Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

*Third.*—Where two legacies of unequal amount are given to the same person in the same will, or in the same codicil, the legatee is entitled to both.

*Fourth.*—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

*Explanation.*—In the four last rules, the word will does not include a codicil.

*Illustrations.*

(*a*) A having ten shares, and no more, in the Bank of Bengal, made his will, which contains near its commencement the words "I bequeath my ten shares in the Bank of Bengal to B." After other bequests, the will concludes with the words "and I bequeath my ten shares in the Bank of Bengal to B." B is entitled simply to receive A's ten shares in the Bank of Bengal.

(*b*) A having one diamond ring, which was given him by B, bequeathed to C the diamond ring which was given him by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

(c) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, in the same will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(*d*) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same will, bequeaths to B the sum of 6,000 rupees. B is entitled to 11,000 rupees.

(*e*) A, by his will, bequeaths to B 5,000 rupees, and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(*f*) A, by one codicil to his will, bequeaths to B 5,000 rupees, and by another codicil, bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(*g*) A, by his will, bequeaths " 500 rupees to B because she was his nurse," and in another part of the will bequeaths 500 rupees to B " because she went to England with his children." B is entitled to receive 1,000 rupees.

(*h*) A, by his will, bequeaths to B the sum of 5,000 rupees, and also, in another part of the will, an annuity of 400 rupees. B is entitled to both legacies.

(*i*) A, by his will, bequeaths to B the sum of 5,000 rupees, and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.[a]

Constitution of residuary legatee.

89. A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

*Illustrations.*

(*a*) A makes her will, consisting of several testamentary papers, in one of which are contained the following words :—" I think there will be something left, after all funeral expenses, &c., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to." B is constituted residuary legatee.

(*b*) A makes his will, with the following passage at the end of it :—" I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure." B is contituted the residuary legatee.

(*c*) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

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[a] This section, and sections 89—103 (both inclusive), apply to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay, Act No. XXI of 1870.

Property to which residuary legatee entitled.

**90.** Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

*Illustration.*

A by his will bequeaths certain legacies, one of which is void under the hundred and fifth section, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his will, A purchases a zamíndárí, which belongs to him at the time of his death. B is entitled to the two legacies and the zamíndárí as part of the residue.

Time of vesting of legacy in general terms.

**91.** If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and if he dies without having received it, it shall pass to his representatives.

In what case legacy lapses.

**92.** If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person.

In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

*Illustrations.*

(*a.*) The testator bequeaths to B "500 rupees which B owes him." B dies before the testator; the legacy lapses.

(*b.*) A bequest is made to A and his children.[a] A dies before the testator or happens to be dead when the will is made. The legacy to A and his children lapses.

(*c.*) A legacy is given to A, and in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(*d.*) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.

(*e.*) A sum of money is bequeathed to A on his completing his eighteenth year, and in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(*f.*) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

Legacy does not lapse if one of two joint legatees die before testator.

**93.** If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

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[a] See Act No. XXI of 1870, sec. 6.

*Illustration.*

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

Effect of words showing testator's intention to give distinct shares.

**94.** But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

*Illustration.*

A sum of money is bequeathed to A, B and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

When lapsed share goes as undisposed of.

**95.** Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of.

*Illustration.*

The testator bequeaths the residue of his estate to A, B and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.

**96.** Where a bequest shall have been made to any child[a] or other lineal descendant of the testator, and the legatee shall die in the lifetime of the testator, but any lineal descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

*Illustration.*

A makes his will, by which he bequeaths a sum of money to his son[a] B for his own absolute use and benefit. B dies before A, leaving a son C who survives A, and having made his will whereby he bequeaths all his property to his widow D. The money goes to D.

Bequest to A for benefit of B does not lapse by A's death.

**97.** Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

Survivorship in case of bequest to described class.

**98.** Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be alive at the testator's death.

*Exception.*—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator,

[a] See Act No. XXI of 1870, sec. 6.

by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

*Illustrations.*

(*a.*) A bequeaths 1,000 rupees to "the children[a] of B" without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three children, C, D and E. E died after the date of the will, but before the death of A. C and D survive A. The legacy shall belong to C and D, to the exclusion of the representatives of E.

(*b.*) A bequeaths a legacy to the children[a] of B. At the time of the testator's death, B has no children. The bequest is void.

(*c.*) A lease for years of a house was bequeathed to A for his life, and after his decease to the children[a] of B. At the death of the testator, B had two children living, C and D; and he never had any other child. Afterwards, during the lifetime of A, C died, leaving E his executor. D has survived A. D and E are jointly entitled to so much of the leasehold term as remains unexpired.

(*d.*) A sum of money was bequeathed to A for her life, and after her decease to the children[a] of B. At the death of the testator, B had two children living, C and D, and after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a will, E having made no will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E, and one to F.

(*e*) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B; D and E have survived B. One-third of A's lands belongs to D, E and the representatives of C, in equal shares.

(*f.*) A bequeaths 1,000 rupees to B for life, and after his death equally among the children[a] of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(*g.*) A bequeaths 1,000 rupees to "all the children[a] born or to be born" of B to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F and G, to the exclusion of the after-born child of B.

(*h.*) A bequeaths a fund to the children[a] of B, to be divided among them when the eldest shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children, named D and E. E died, but C and D

[a] See Act No. XXI of 1870, sec. 6.

were living when C attained majority. The fund belongs to C, D and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

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## PART XII.

### Of void Bequests.

Bequest to person by particular description, who is not in existence at testator's death.

**99.** Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

*Exception.*—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest, or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or if he be dead, to his representatives.

*Illustrations.*

(*a.*) A bequeaths 1,000 rupees to the eldest son [a] of B. At the death of the testator B has no son. The bequest is void.

(*b.*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son[a] of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death, the legacy goes to C's son.

(*c.*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son[a] of C. At the death of the testator, C had no son; afterwards, during the life of B, a son, named D, is born to C. D dies, then B dies. The legacy goes to the representative of D.

(*d.*) A bequeaths his estate of Greenacre to B for life, and at his decease to the eldest son[a] of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(*e.*) A bequeaths 1,000 rupees to the eldest son[a] of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

Bequest to person not in existence at testator's death, subject to prior bequest.

**100.** Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

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[a] See Act No. XXI of 1870, sec. 6.

*Illustrations.*

(*a.*) Property is bequeathed to A for his life, and after his death to his eldest son [a] for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(*b.*) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters, some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(*c.*) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that if any of them marries under the age of eighteen, her portion shall be settled so that it may belong to herself for life, and may be divisible among her children[a] after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect, in the case of each daughter who marries under eighteen, of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(*d.*) A bequeaths a sum of money to B for life, and directs that upon the death of B the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children [a] after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest, to persons not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

Rule against perpetuity.

**101.** No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

*Illustrations.*

(*a.*) A fund is bequeathed to A for his life; and after his death to B for his life; and after B's death to such of the sons [a] of B as shall first attain the age of 25. A and B survive the testator. Here the son of B who shall first attain the age of 25, may be a son born after the death of the testator; such son may not attain 25 until

[a] See Act No. XXI of 1870, sec. 6.

more than 18 years have elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the lifetime of A and B, and the minority of the sons of B. The bequest after B's death is void.

(*b.*) A fund is bequeathed to A for his life; and after his death to B for his life; and after B's death to such of B's sons [a] as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(*c*) A fund is bequeathed to A for his life, and after his death to B for his life, with a direction that after B's death it shall be divided amongst such of B's children [a] as shall attain the age of 18; but that if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(*d*) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children [a] as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughter whose share it was. All these provisions are valid.

Bequest to a class, some of whom may come under rules in sections 100 and 101.

**102.** If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in the two last preceding sections, or either of them, such bequest shall be wholly void.[b]

*Illustrations.*

(*a*) A fund is bequeathed to A for life, and after his death to all his children [a] who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death; and as it is given to all his children as a class, it is not good as to any division of that class, but is holly void.

(*b*) A fund is bequeathed to A for his life, and after his death to B, C, D and all other the c ildren [a] of A who shall attain the age of 25. B, C, D are children of A living at the testator's decease. In all other respects the case is the same as that supposed in illustration (*a*). The mention of B, C and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void.

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[a] See Act No. XXI of 1870, sec. 6.
[b] 8 Beng. 400.

Bequest to take effect on failure of bequest void under section 100, 101 or 102.

**103.** Where a bequest is void by reason of any of the rules contained in the three last preceding sections, any bequest contained in the same will, and intended to take effect after or upon failure of such prior bequest, is also void.

*Illustrations.*

(*a*) A fund is bequeathed to A for his life, and after his death to such of his sons [a] as shall first attain the age of 25, for his life, and after the decease of such son, to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

(*b*) A fund is bequeathed to A for his life, and after his death to such of his sons [a] as shall first attain the age of 25, and if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons [a] as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

Effect of direction for accumulation.

**104.** A direction to accumulate the income arising from any property shall be void; and the property shall be disposed of as if no accumulation had been directed.

*Exception.*—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death;

and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

*Illustrations.*

(*a*) The will directs that the sum of 10,000 rupees shall be invested in Government securities, and the income accumulated for 20 years, and that the principal, together with the accumulations, shall then be divided between A, B and C. A, B and C are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(*b*) The will directs that 10,000 rupees shall be invested, and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(*c*) The will directs that the rents of the farm of Sultánpur shall be accumulated for ten years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator, A has an eldest son living, named B. B shall receive at the end of one year from the testator's death the rents which have accrued during the year, together with any interest which may have been made by investing them.

[a] See Act No. XXI of 1870, sec. 6.

(*d*) The will directs that the rents of the farm of Sultánpur shall be accumulated for ten years, and that the accumulations shall then be paid to the eldest son of A. At the death of the testator, A has no son. The bequest is void.

(*e*) A bequeaths a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A's death the legacy becomes vested in B; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the will, but in consequence of B's minority.

Bequest to religious or charitable uses.

**105.** No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons.

*Illustration.*

A having a nephew makes a bequest by a will not executed nor deposited as required—

for the relief of poor people;
for the maintenance of sick soldiers;
for the erection or support of a hospital;
for the education and preferment of orphans;
for the support of scholars;
for the erection or support of a school;
for the building and repairs of a bridge;
for the making of roads;
for the erection or support of a church;
for the repairs of a church;
for the benefit of ministers of religion;
for the formation or support of a public garden.

All these bequests are void.

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## PART XIII.

### Of the vesting of Legacies.[a]

Date of vesting of legacy when payment or possession postponed.

**106.** Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's

[a] This Part applies to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay, Act No. XXI of 1870.

representatives if he dies before that time and without having received the legacy.

And in such cases the legacy is from the testator's death said to be vested in interest.

*Explanation.*—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

*Illustrations.*

(*a*) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(*b*) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(*c*) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(*d*) A fund is bequeathed to A until B attains the age of 18, and then to B. The legacy to B is vested in interest from the testator's death.

(*e*) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(*f*) A fund is bequeathed to A, B and C in equal shares, to be paid to them on their attaining the age of 18 respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A, B and C, subject to be devested in case A, B and C shall all die under 18, and upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

Date of vesting when legacy contingent upon specified uncertain event.

**107.** A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

*Exception.*—Where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely the income to

arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit; the bequest of the fund is not contingent.

*Illustrations.*

(*a*) A legacy is bequeathed to D in case A, B and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B and C all die under 18, or one of them attains that age.

(*b*) A sum of money is bequeathed to A "in case he shall attain the age of 18," or, "when he shall attain the age of 18." A's interest in the legacy is contingent until the condition shall be fulfilled by his attaining that age.

(*c*) An estate is bequeathed to A for life, and after his death to B, if B shall then be living, but if B shall not be then living, to C. A, B and C survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other shall have happened.

(*d*) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(*e*) A legacy is bequeathed to A when she shall attain the age of 18, or shall marry under that age with the consent of B, with a proviso that, if she shall not attain 18, or marry under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy, although she may have married under 18 without the consent of B.

(*f*) An estate is bequeathed to A until he shall marry, and after that event to B. B's interest in the bequest is contingent until the condition shall be fulfilled by A's marrying.

(*g*) An estate is bequeathed to A until he shall take advantage of the Act for the Relief of Insolvent Debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of the Act.

(*h*) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(*i*) A leaves his farm of Sultánpur Khurd to B, if B shall convey his own farm of Sultánpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(*j*) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent, until the condition shall be fulfilled by the expiration of the five years without B's having married C, or by the occurrence, within that period, of an event which makes the fulfilment of the condition impossible.

(*k*) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.

(*l*) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(*m*) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

Vesting of interest in bequest to such members of a class as shall have attained particular age.

**108.** Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

*Illustration.*

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that, while any child of A shall be under the age of 18, the income of the share, to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A who is under the age of 18 has a vested interest in the bequest.

## PART XIV.

### Of Onerous Bequests.

Onerous bequest.

**109.** Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

*Illustration.*

A having shares in (X), a prosperous joint stock company, and also shares in (Y), a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies. B refuses to accept the shares in (Y). He forfeits the shares in (X).

One of two separate and independent bequests to same person may be accepted, and other refused.

**110.** Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

*Illustration.*

A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He shall not by this refusal forfeit the money.

## PART XV.

### Of Contingent Bequests.

Bequest contingent upon specified un-

**111.** Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the will for the occurrence of that event, the

legacy cannot take effect unless such event happens before the period when the fund bequeathed is payable or distributable.

certain event, no time being mentioned for its occurrence.

*Illustrations.*

(*a*) A legacy is bequeathed to A, and in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(*b*) A legacy is bequeathed to A, and in case of his death without children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.

(*c*) A legacy is bequeathed to A when and if he attains the age of 18, and in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(*d*) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death without children," to C. The words "in case of B's death without children" are to be understood as meaning in case B shall die without children during the lifetime of A.

(*e*) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death," to C. The words "in case of B's death" are to be considered as meaning "in case B shall die in the lifetime of A."

**112.** Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the will.

Bequest to such of certain persons as shall be surviving at some period not specified.

*Illustrations.*

(*a*) Property is bequeathed to A and B, to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(*b*) Property is bequeathed to A for life, and after his death to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death the legacy goes to C.

(*c*) Property is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that, if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator; B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(*d*) Property is bequeathed to A for life, and after his death to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

## PART XVI.

### Of Conditional Bequests.

Bequest upon impossible condition.

**113.** A bequest upon an impossible condition is void.

*Illustrations.*

(*a*) An estate is bequeathed to A on condition that he shall walk one hundred miles in an hour. The bequest is void.

(*b*) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the will. The bequest is void.

Bequest upon illegal or immoral condition.

**114.** A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

*Illustrations.*

(*a*) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(*b*) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void..

Fulfilment of condition precedent to vesting of legacy.

**115.** Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

*Illustrations.*

(*a*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(*b*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(*c*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries in the lifetime of B, C and D, with the consent of B and C only. A has not fulfilled the condition.

(*d*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(*e*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries without the consent of B, C and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(*f*) A makes his will, whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A,

and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(*g*) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition and is not entitled to receive the legacy.

Bequest to A, and, on failure of prior bequest, to B.

**116.** Where there is a bequest to one person and a bequest of the same thing to another if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

*Illustrations.*

(*a*) A bequeaths a sum of money to his own children surviving him, and if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(*b*). A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

When second bequest not to take effect on failure of first.

**117.** Where the will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

*Illustration.*

A makes a bequest to his wife, but in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The bequest to B does not take effect.

Bequest over, conditional upon happening or not happening of specified uncertain event.

**118.** A bequest may be made to any person with the condition superadded that in case a specified uncertain event shall happen, the thing bequeathed shall go to another person; or, that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.

In each case the ulterior bequest is subject to the rules contained in sections 107, 108, 109, 110, 111, 112, 113, 114, 116, 117.

*Illustrations.*

(*a*). A sum of money is bequeathed to A, to be paid to him at the age of 18, and if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be devested and to go to B in case A shall die under 18.

(*b*). An estate is bequeathed to A with a proviso that if A shall dispute the competency of the testator to make a will, the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

(*c*). A sum of money is bequeathed to A for life, and after his death to B, but if B shall then be dead, leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be devested if he dies leaving a son in A's lifetime.

(*d*). A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money, and the representative of B takes the other half.

(*e*) A bequeaths to B the interest of a fund for life, and directs the fund to be divided, at her death, equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

Condition must be strictly fulfilled.

**119.** An ulterior bequest of the kind contemplated by the last preceding section cannot take effect, unless the condition is strictly fulfilled.

*Illustrations.*

(*a*). A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, C and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(*b*) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C does not take effect.

(*c*) A legacy is bequeathed to A, to be paid at 18, or marriage, with a proviso that, if A dies under 18, or marries without the consent of B, the legacy shall go to C. A marries under 18, without the consent of B. The bequest to C takes effect.

Original bequest not affected by invalidity of second.

**120.** If the ulterior bequest be not valid, the original bequest is not affected by it.

*Illustrations.*

(*a*) An estate is bequeathed to A for his life, with a condition superadded that if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the will.

(*b*) An estate is bequeathed to A for her life, and if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the will.

(*c*) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under section 92, and A is entitled to the estate during his life.

**121.** A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Bequest conditioned that it shall cease to have effect in case specified uncertain event shall happen or not happen.

*Illustrations.*

(*a*) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood; he loses his life-interest in the estate.

(*b*) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(*c*) An estate is bequeathed to A, provided that, if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(*d*) An estate is bequeathed to A, with a proviso that, if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(*e*) A fund is bequeathed to A for life, and after his death to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

**122.** In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by the one hundred and seventh section.

Such condition must not be invalid under section 107.

**123.** Where a bequest is made with a condition superadded that unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect; but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Result of legatee rendering impossible or indefinitely postponing act for which no time specified and on nonperformance of which subject-matter to go over.

*Illustrations.*

(*a*) A bequest is made to A with a proviso that, unless he enters the army, the legacy shall go over to B. A takes holy orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(*b*) A bequest is made to A with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger, and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

Performance of condition, precedent or subsequent, within specified time.

**124.** Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect; the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

Further time in case of fraud.

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## PART XVII.

### Of Bequests with Directions as to Application or Enjoyment.

Direction that funds be employed in particular manner following absolute bequest of same to or for benefit of any person.

**125.** Where a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

*Illustration.*

A sum of money is bequeathed towards purchasing a country-residence for A, or to purchase an annuity for A, or to purchase a commission in the army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.

**126.** Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

*Illustrations.*

(*a*) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life, and be paid to their children after their death. All the daughters die unmarried: the representatives of each daughter are entitled to her share of the residue.

(*b*) A directs his trustees to raise a sum of money for his daughter, and he then directs that they shall invest the fund, and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

**127.** Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

Bequest of fund for certain purposes, some of which cannot be fulfilled.

*Illustrations.*

(*a*) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and at his death shall divide the principal among his children; the son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(*b*) A bequeaths the residue of his estate to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that at their decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

## PART XVIII.

### Of Bequests to an Executor.

**128.** If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy unless he proves the will or otherwise manifests an intention to act as executor.

Legatee named as executor cannot take unless he shews intention to act as executor.

*Illustration.*

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will. A has manifested an intention to act as executor.

## PART XIX.

### Of Specific Legacies.

**129.** Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.

Specific legacy defined.

*Illustrations.*

(*a.*) A bequeaths to B—

"the diamond-ring presented to him by C:"

"his gold chain:"

"a certain bale of wool:"

"a certain piece of cloth:"

"all his household-goods, which shall be in or about his dwelling-house in M Street, in Calcutta, at the time of his death:"

"the sum of 1,000 rupees in a certain chest:"

"the debt which B owes him:"

"all his bills, bonds, and securities belonging to him, lying in his lodgings in Calcutta:"

"all his furniture in his house in Calcutta:"

"all his goods on board a certain ship then lying in the river Hugli:"

"2,000 rupees which he has in the hands of C:"

"the money due to him on the bond of D:"

"his mortgage on the Rámpur factory:"

"one-half of the money owing to him on his mortgage of Rámpur factory:"

"1,000 rupees, being part of a debt due to him from C:"

"his capital stock of 1,000*l.* in East India Stock:"

"his promissory notes of the Government of India, for 10,000 rupees in their four per cent. loan:"

"all such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D and Company:"

"all the wine which he may have in his cellar at the time of his death:"

"such of his horses as B may select:"

"all his shares in the Bank of Bengal:"

"all the shares in the Bank of Bengal which he may possess at the time of his death:"

"all the money which he has in the 5½ per cent. loan of the Government of India:"

"all the Government securities he shall be entitled to at the time of his decease."

Each of these legacies is specific.

(*b.*) A having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B.

The legacy is specific.

(*c.*) A having property at Benares, and also in other places, bequeaths to B all his property at Benares.

The legacy is specific.

(*d.*) A bequeaths to B—

his house in Calcutta:

his zamíndárí of Rámpur:

his táluq of Rámnagar:

his lease of the Indigo-factory of Salkya:

an annuity of 500 rupees out of the rents of his zamíndárí of W.

A directs his zamíndárí of X to be sold, and the proceeds to be invested for the benefit of B.

Each of these bequests is specific.

(*e.*) A by his will charges his zamíndárí of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamíndárí to D.

Each of these bequests is specific.

(*f.*) A bequeaths a sum of money—

to buy a house in Calcutta for B:

to buy an estate in zila Faríd pur for B:

to buy a diamond-ring for B:

to buy a horse for B:

to be invested in shares in the Bank of Bengal for B:

to be invested in Government securities for B.

A bequeaths to B—

"a diamond-ring:"

"a horse:"

"10,000 rupees worth of Government securities:"

"an annuity of 500 rupees:"

"2,000 rupees, to be paid in cash:"

"so much money as will produce 5,000 rupees four per cent. Government securities."

These bequests are not specific.

(*g.*) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of the property which he may leave in England.

No one of these legacies is specific.

Bequest of sum certain where stocks, &c., in which invested, are described.

**130.** Where a sum certain is bequeathed, the legacy is not specific merely because the stocks, funds, or securities in which it is invested are described in the will.

*Illustration.*

A bequeaths to B—

"10,000 rupees of his funded property:"

"10,000 rupees of his property now invested in shares of the East Indian Railway Company:"

"10,000 rupees, at present secured by mortgage of Rámpur factory."

No one of these legacies is specific.

Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.

**131.** Where a bequest is made in general terms, of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

*Illustration.*

A bequeaths to B 5,000 rupees five per cent. Government securities. A had at the date of the will five per cent. Government securities for 5,000 rupees.

The legacy is not specific.

Bequest of money where not payable until part of testator's property disposed of in certain way.

**132.** A money-legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

*Illustration.*

A bequeaths to B 10,000 rupees, and directs that this legacy shall be paid as soon as A's property in India shall be realized in England.

The legacy is not specific.

When enumerated articles not deemed specifically bequeathed.

**133.** Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

Retention, in form, of specific bequest to several persons in succession.

**134.** Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

*Illustrations.*

(*a*) A, having a lease of a house for a term of years, 15 of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and after B's death to C. B is to enjoy the property as A left it, although, if B lives for 15 years C can take nothing under the bequest.

(*b*) A, having an annuity during the life of B, bequeaths it to C for his life, and after C's death, to D. C is to enjoy the annuity as A left it, although, if B dies before D, D can take nothing under the bequest.

Sale and investment of proceeds of property bequeathed to two or more persons in succession.

**135.** Where property comprised in a bequest to two or more persons in succession, is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will.

*Illustration.*

A, having a lease for a term of years, bequeaths "all his property" to B for life, and after B's death, to C. The lease must be sold, and the proceeds invested as stated in the text, and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

**136.** If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

## PART XX.

### Of Demonstrative Legacies.[a]

**137.** Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Demonstrative legacy defined.

*Explanation*—The distinction between a specific legacy and a demonstrative legacy consists in this, that

where specified property is given to the legatee, the legacy is specific;

where the legacy is directed to be paid out of specified property, it is demonstrative.

*Illustrations.*

(*a*) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific; the legacy to C is demonstrative.

(*b*) A bequeaths to B—

"ten bushels of the corn which shall grow in his field of Greenacre:"

"80 chests of the indigo which shall be made at his factory of Rámpur:"

"10,000 rupees out of his five per cent. promissory notes of the Government of India:"

an annuity of 500 rupees "from his funded property:"

"1,000 rupees out of the sum of 2,000 rupees due to him by C."

A bequeaths to B an annuity, and directs it to be paid out of the rents arising from his táluq of Rámnagar.

A bequeaths to B—

"10,000 rupees out of his estate at Rámnagar," or charges it on his estate at Rámnagar:

"10,000 rupees, being his share of the capital embarked in a certain business."

Each of these bequests is demonstrative.

**138.** Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator.

Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

[a] This Part applies to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay, see Act No. XXI of 1870.

*Illustration.*

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees; of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

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## PART XXI.

### Of Ademption of Legacies.[a]

Ademption explained.

**139.** If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the will.

*Illustrations.*

(*a*) A bequeaths to B—

"the diamond-ring presented to him by C"

"his gold-chain."

"a certain bale of wool."

"a certain piece of cloth"

"all his household goods which shall be in or about his dwelling-house in M Street, in Calcutta, at the time of his death."

A, in his lifetime,

sells or gives away the ring

converts the chain into a cup

converts the wool into cloth.

makes the cloth into a garment.

takes another house into which he removes all his goods:

Each of these legacies is adeemed.

(*b*) A bequeaths to B—

"the sum of 1,000 rupees in a certain chest"

"all the horses in his stable."

At the death of A, no money is found in the chest, and no horses in the stable.

The legacies are adeemed.

(*c*) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned.

The legacy is adeemed.

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[a] This Part applies to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay, see Act No XXI of 1870.

**140.** A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind; but it shall in such case be paid out of the general assets of the testator.

Non-ademption of demonstrative legacy.

**141.** Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Ademption of specific bequest of right to receive something from third party.

*Illustrations.*

(*a*) A bequeaths to B—

"the debt which C owes him:"

"2,000 rupees which he has in the hands of D:"

"the money due to him on the bond of E:"

"his mortgage on the Rámpur factory."

All these debts are extinguished in A's lifetime, some with and some without his consent.

All the legacies are adeemed.

(*b*) A bequeaths to B—

"his interest in certain policies of life-assurance."

A in his lifetime receives the amount of the policies.

The legacy is adeemed.

**142.** The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.

*Illustration.*

A bequeaths to B "the debt due to him by C." The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

**143.** If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Ademption *pro tanto* by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.

*Illustration.*

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

**144.** Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee;

Order of payment where portion of

fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and testator having received portion of that fund, remainder insufficient to pay both legacies.

if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

*Illustration.*

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 500 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

Ademption where stock, specifically bequeathed, does not exist at testator's death.

**145.** Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

*Illustration.*

A bequeaths to B—

"his capital stock of 1,000*l.* in East India Stock:"

"his promissory notes of the Government of India for 10,000 rupees in their four per cent. loan."

A sells the stock and the notes.

The legacies are adeemed.

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death

**146.** Where stock which has been specifically bequeathed, does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

*Illustration.*

A bequeaths to B—

"his 10,000 rupees in the 5½ per cent. loan of the Government of India."

A sells one-half of his 10,000 rupees in the loan in question.

One-half of the legacy is adeemed.

Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.

**147.** A specific bequest of goods under a description connecting them with a certain place, is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

*Illustrations.*

A bequeaths to B "all his household-goods which shall be in or about his dwelling-house in Calcutta at the time of his death." The goods are removed from the house to save them from fire. A dies before they are brought back.

A bequeaths to B "all his household-goods which shall be in or about his dwelling-house in Calcutta at the time of his death." During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

When removal of thing bequeathed does not constitute ademption.

**148.** The removal of the thing bequeathed from the place in which it is stated in the will to be situated, does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

*Illustrations.*

A bequeaths to B all the bills, bonds, and other securities for money belonging to him then lying in his lodgings in Calcutta. At the time of his death, these effects had been removed from his lodgings in Calcutta.

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death, the furniture is in the house at Chinsurah.

A bequeaths to B all his goods on board a certain ship then lying in the river Hugli. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

When thing bequeathed is a valuable to be received by testator from third person; and testator himself, or his representative, receives it.

**149.** Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption,

but if he mixes it up with the general mass of his property, the legacy is adeemed.

*Illustration.*

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

Change by operation of law of subject of specific bequest between date of will and testator's death.

**150.** Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

*Illustrations.*

A bequeaths to B "all the money which he has in the 5½ per cent. loan of the Government of India."

The securities for the 5½ per cent. loan are converted during A's lifetime into five per cent. stock.

A bequeaths to B the sum of 2,000*l.*, invested in Consols in the names of trustees for A.

The sum of 2,000*l.* is transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India which he has power, under his marriage-settlement, to dispose of by will. Afterwards, in A's lifetime, the fund is converted into Consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

Change of subject without testator's knowledge.

**151.** Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

*Illustration.*

A bequeaths to B "all his three per cent. Consols." The Consols are, without A's knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

Stock specifically bequeathed, lent to third party on condition that it be replaced.

**152.** Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

Stock specifically bequeathed, sold but replaced and belonging to testator at his death.

**153.** Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

## PART XXII.

### Of the Payment of Liabilities in respect of the Subject of a Bequest.[a]

Non-liability of executor to exonerate specific legatees.

**154.** Where property specifically bequeathed is subject at the death of the testator to any pledge, lien, or incumbrance, created by the testator himself or by any person under whom he claims; then, unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance.

A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

[a] This Part applies to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay, see Act No. XXI of 1870.

*Explanation.*—A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

*Illustrations.*

(*a*) A bequeaths to B the diamond-ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring.

(*b*) A bequeaths to B a zamíndárí, which at A's death is subject to a mortgage for 10,000 rupees, and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

Completion of testator's title to things bequeathed to be at cost of his estate.

**155.** Where any thing is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

*Illustrations.*

(*a*). A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.

(*b*). A, having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down, and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

Exoneration of legatee's immoveable property for which land-revenue or rent payable periodically.

**156.** Where there is a bequest of any interest in immoveable property, in respect of which payment in the nature of land-revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

*Illustration.*

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate shall make good 25 rupees in respect of the rent.

Exoneration of specific legatee's stock in Joint Stock Company.

**157.** In the absence of any direction in the will, where there is a specific bequest of stock in a Joint Stock Company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate;

but if any call or other payment shall, after the testator's death, become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accept the bequest.

*Illustrations.*

(*a*). A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(*b*). A has agreed to take 50 shares in an intended Joint Stock Company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(*c*). A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(*d*). A bequeaths to B his shares in a Joint Stock Company. B accepts the bequest. Afterwards the affairs of the Company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(*e*). A is the owner of ten shares in a Railway Company. At a meeting held during his lifetime a call is made of 3*l.* per share, payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

## PART XXIII.

### Of Bequests of Things described in general Terms.[a]

Bequest of thing described in general terms.

**158.** If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

*Illustrations.*

(*a*). A bequeaths to B *a* pair of carriage-horses, or *a* diamond-ring. The executor must provide the legatee with such articles, if the state of the assets will allow it.

(*b*). A bequeaths to B "*his* pair of carriage-horses." A had no carriage-horses at the time of his death. The legacy fails.

## PART XXIV.

### Of Bequests of the Interest or Produce of a Fund.[b]

Bequest of interest or produce of fund.

**159.** Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of

[a, b] This Part applies to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay, see Act No. XXI of 1870.

the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

*Illustrations.*

(*a*). A bequeaths to B the interest of his five per cent. promissory notes of the Government of India. There is no other clause in the will affecting those securities. B is entitled to A's five per cent. promissory notes of the Government of India.

(*b*). A bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life; and C is entitled to the notes upon B's death.

(*c*). A bequeaths to B the rents of his lands at X. B is entitled to the lands.

## PART XXV.

### Of Bequests of Annuities.[a]

Annuity created by will payable for life only, unless contrary intention appears by will.

**160.** Where an annuity is created by will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

*Illustrations.*

(*a*). A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(*b*). A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(*c*). A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.

**161.** Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him, or to receive the money appropriated for that purpose by the will.

*Illustrations.*

(*a*) A by his will directs that his executors shall out of his property purchase an annuity of 1,000 rupees for B. B is entitled at his option to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

[a] This Part applies to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay, see Act No. XXI of 1870.

(*b*) A bequeaths a fund to B for his life, and directs that after B's death it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

Abatement of annuity.

**162.** Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the will.

Where gift of annuity, and residuary gift whole annuity, to be first satisfied.

**163.** Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

## PART XXVI.

### Of Legacies to Creditors and Portioners.[a]

Creditor *primâ facie* entitled to legacy as well as debt.

**164.** Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

Child *primâ facie* entitled to legacy as well as portion.

**165.** Where a parent who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

*Illustration.*

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

No ademption by subsequent provision for legatee.

**166.** No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

*Illustrations.*

(*a*) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(*b*) A bequeaths 40,000 rupees to B, his orphan-niece, whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

[a] This Part applies to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay, see Act No. XXI of 1870.

## PART XXVII.

### OF ELECTION.[a]

**167.** Where a man, by his will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the will.

Circumstances in which election takes place.

**168.** The interest so relinquished shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

Devolution of interest relinquished by owner.

**169.** This rule will apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

Testator's belief as to his ownership immaterial.

*Illustrations.*

(*a*) The farm of Sultánpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultánpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(*b*) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel, or to lose the estate.

(*c*) A bequeaths to B 1,000 rupees, and to C an estate which will, under a settlement, belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(*d*) A, a person of the age of 18 domiciled in British India, but owning real property in England, to which C is heir-at-law, bequeaths a legacy to C, and, subject thereto, devises and bequeaths to B "all his property, whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

**170.** A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Bequest for man's benefit how regarded for purpose of election.

*Illustration.*

The farm of Sultánpur Khurd being the property of B, A bequeathed it to C; and bequeathed another farm called Sultánpur Buzurg to his own executors, with a direction that it should be sold, and the proceeds applied in payment of B's debts. B must elect whether he will abide by the will, or keep his farm of Sultánpur Khurd in opposition to it.

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[a] This Part applies to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay, see Act No. XXI of 1870.

Person deriving benefit indirectly not put to election.

**171.** A person taking no benefit directly under the will, but deriving a benefit under it indirectly, is not put to his election.

*Illustration.*

The lands of Sultánpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultánpur to B, and 1,000 rupees to C. C dies intestate, shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B for the rents of the lands of Sultánpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultánpur in opposition to the will.

Person taking in individual capacity under will, may in other character elect to take in opposition.

**172.** A person who in his individual capacity takes a benefit under the will, may in another character elect to take in opposition to the will.

*Illustration.*

The estate of Sultánpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultánpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultánpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

*Exception to the six last rules.*—Where a particular gift is expressed in the will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the will, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

*Illustration.*

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultánpur during her life.

A by his will bequeaths to his wife an annuity of 200*l.* during her life, in lieu of her interest in the estate of Sultánpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000*l.* The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000*l.*

When acceptance of benefit given by will constitutes election to take under will.

**173.** Acceptance of a benefit given by the will constitutes an election by the legatee to take under the will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

*Illustrations.*

(*a*) A is owner of an estate called Sultánpur Khurd, and has a life-interest in another estate called Sultánpur Buzurg, to which, upon his death, his son B will be absolutely entitled. The will of A gives the estate of Sultánpur Khurd to B, and the estate of Sultánpur Buzurg to C. B, in ignorance of his own right to the estate of Sultánpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultánpur Khurd. B has not confirmed the bequest of Sultánpur Buzurg to C.

(*b*) B, the eldest son of A, is the possessor of an estate called Sultánpur. A bequeaths Sultánpur to C, and to B the residue of A's property. B, having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultánpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultánpur to C.

Presumption arising from enjoyment by legatee for two years.

**174.** Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

Confirmation of bequest by act of legatee.

**175.** Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

*Illustration.*

A bequeaths to B an estate to which C is entitled, and to C a coal-mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the bequest of the estate to B.

When testator's representatives may call upon legatee to elect.

**176.** If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election;

Effect of non-compliance.

and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

Postponement of election in case of disability.

**177.** In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

## PART XXVIII.

### Of Gifts in Contemplation of Death.[a]

Property transferable by gift made in contemplation of death.

**178.** A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

[a] This Part does not apply to Hindús, see Act No. XXI of 1870.

When gift said to be made in contemplation of death.

A gift is said to be made in contemplation of death where a man who is ill and expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

Such gift resumable.

Such a gift may be resumed by the giver.

When it fails.

It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

*Illustrations.*

(*a*) A being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death—

a watch:
a bond granted by C to A:
a bank-note:
a promissory note of the Government of India endorsed in blank:
a bill of exchange endorsed in blank:
certain mortgage-deeds.

A dies of the illness during which he delivered these articles.

B is entitled to—

the watch:
the debt secured by C's bond:
the bank-note:
the promissory note of the Government of India:
the bill of exchange:
the money secured by the mortgage-deeds.

(*b*) A being ill, and in expectation of death, delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A's goods of bulk in the warehouse.

(*c*) A being ill, and in expectation of death, puts aside certain articles in separate parcels, and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

## PART XXIX.

### Of Grant of Probate and Letters of Administration.

Character and property of executor or administrator as such.

**179.** The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property[a] of the deceased person vests in him as such.[b]

[a] This does not include property vested in the deceased as executor or administrator under Act No. X of 1865, 12 Beng. 428, 429.

[b] This section and secs. 180—189 (both inclusive) apply to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay, Act No. XXI of 1870.

**180.** When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the province, whether in the British dominions, or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Administration with copy annexed of authenticated copy of will proved abroad.

**181.** Probate can be granted only to an executor appointed by the will.

Probate only to appointed executor.

**182.** The appointment may be express or by necessary implication.[a]

Appointment express or implied.

*Illustrations.*

(*a*) A wills that C be his executor if B will not; B is appointed executor by implication.

(*b*) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law,[b] C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words :—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

**183.** Probate cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

Persons to whom probate cannot be granted.

**184.** When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Grant of probate to several executors simultaneously or at different times.

*Illustration.*

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

**185.** If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Separate probate of codicil discovered after grant of probate.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Procedure when different executors appointed by codicil.

**186.** When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Accrual of representation to surviving executor.

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[a] 7 Bomb., A. C. J., 64; 7 Beng. 563.

[b] See Act No. XXI of 1870, sec. 6.

Right as executor or legatee when established.

**187.** No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction within the province shall have granted probate of the will under which the right is claimed, or shall have granted letters of administration under the one hundred and eightieth section.

Effect of probate.

**188.** Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

To whom administration may not be granted.

**189.** Letters of administration cannot be granted to any person who is a minor or is of unsound mind,

nor to a married woman without the previous consent of her husband.

Right to intestate's property when established.

**190.** No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

Effect of letters of administration.

**191.** Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.[a]

Acts not validated by administration.

**192.** Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Grant of administration where executor has not renounced.

**193.** When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship;

Exception.

except that, when one or more of several executors have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Form and effect of renunciation of executorship.

**194.** The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Procedure where executor renounces or fails to accept within time limited.

**195.** If the executor renounce, or fail to accept the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.[b]

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[a] This section and sections 192—199 (both inclusive) apply to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay, Act No. XXI of 1870.

[b] See Act No. XXI of 1870, sec. 6.

**196.** When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will but before he has administered all the estate of the deceased;[a]

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Grant of administration to universal or residuary legatee.

**197.** When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Right to administration of representative of deceased residuary legatee.

**198.** When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate,[b] or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

**199.** Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

Citation before grant of administration to legatee other than universal or residuary.

**200.** When the deceased has died intestate, those who are connected with him either by marriage or by consanguinity, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated.

Order in which connections entitled to administer.

**201.** If the deceased has left a widow, administration shall be granted to the widow unless the Court shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

Administration to widow unless Court see cause to exclude her.

*Illustrations.*

(*a*). The widow is a lunatic, or has committed adultery, or has been barred by her marriage-settlement of all interest in her husband's estate; there is cause for excluding her from the administration.

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[a] 12 Beng. 423,427.
[b] See Act No. XXI of 1870, sec. 6.

(*b*). The widow has married again since the decease of her husband; this is not good cause for her exclusion.

Association with widow in administration.

**202.** If the Judge think proper, he may associate any person or persons with the widow in the administration, who would be entitled solely to the administration if there were no widow.

Administration where no widow or widow excluded.

**203.** If there be no widow, or if the Court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate;

Proviso.

provided that, when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

Title of kindred to administration.

**204.** Those who stand in equal degree of kindred to the deceased, are equally entitled to administration.[a]

Right of widower to administration of wife's estate.

**205.** The husband, surviving his wife, has the same right of administration of her estate as the widow has in respect of the estate of her husband.

Grant of administration to creditor.

**206.** When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration, and willing to act, they may be granted to a creditor.

Administration where property left in British India.

**207.** Where the deceased has left property in British India, letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of British India.

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## PART XXX.

### Of Limited Grants.[b]

#### (*a*). *Grants limited in Duration.*

Probate of copy or draft of lost will.

**208.** When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of contents of lost or destroyed will.

**209.** When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

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[a] 1 Beng., Short Notes of Cases, III.

[b] So much of this Part as relates to grants of probate and letters of administration with the will annexed applies to wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay, Act No. XXI of 1870.

**210.** When the will is in the possession of a person residing out of the province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Probate of copy where original exists.

**211.** Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will, or an authenticated copy of it, be produced.

Administration until will produced.

(*b.*) *Grants for the Use and Benefit of others having Right.*

**212.** When any executor is absent from the province in which application is made, and there is no executor within the province willing to act, letters of administration, with the will annexed, may be granted to the attorney[a] of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration, with will annexed, to attorney of absent executor.

**213.** When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the province, letters of administration with the will annexed may be granted to his attorney,[a] limited as above-mentioned.

Administration, with will annexed, to attorney of absent person, who, if present, would be entitled to administer.

**214.** When a person entitled to administration in case of intestacy is absent from the province, and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as before mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

**215.** When a minor is sole executor or sole residuary legatee, letters of administration, with the will annexed, may be granted to the legal guardian of such minor or to such other person as the Court shall think fit until the minor shall have completed the age of eighteen years, at which period and not before, probate of the will shall be granted to him.

Administration during minority of sole executor or residuary legatee.

**216.** When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of eighteen years.

Administration during minority of several executors or residuary legatees.

**217.** If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, be a lunatic, letters of

Administration for use and benefit of lunatic *jus habens.*

[a] The attorney must be within the jurisdiction of the Court, 4 Beng., Appendix, 49.

administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or if there be no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall become of sound mind.

Administration *pendente lite.*

**218.** Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(*c.*) *For Special Purposes.*

Probate limited to purpose specified in will.

**219.** If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an attorney to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

Administration with will annexed limited to particular purpose.

**220.** If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration limited to property in which person has beneficial interest.

**221.** Where a person dies, leaving property of which he was th sole or surviving trustee, or in which he had no benefical interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

Administration limited to suit.

**222.** When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to purpose of becoming party to sui

**223.** If at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the province within which the Court that has

granted the probate or letters of administration is situate, it shall be lawful for such Court to grant, to any person whom it may think fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

to be brought against administrator.

**224.** In any case in which it may appear necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate, may grant to any person whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Administration limited to collection and preservation of deceased's property.

**225.** When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor shall, at the time of the death of such person, be resident out of the province, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who under ordinary circumstances would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator,

Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

and in every such case letters of administration may be limited or not as the Judge shall think fit.

### *(d.) Grants with Exception.*

**226.** Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

Probate or administration with will annexed, subject to exception.

**227.** Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

Administration with exception.

### *(e.) Grants of the Rest.*

**228.** Whenever a grant, with exception, of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Probate or administration of rest.

*(f.) Grants of Effects unadministered.*

Grant of effects unadministered.

**229.** If the executor to whom probate has been granted have died leaving a part of the testator's estate unadministered, a new representative may[a] be appointed for the purpose of administering such part of the estate.

Rules as to grants of effects unadministered.

**230.** In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.[b]

Administration when limited grant expired, and still some part of estate unadministered.

**231.** When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.[c]

*(g.) Alteration in Grants.*

What errors may be rectified by Court.

**232.** Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

**233.** If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

*(h.) Revocation of Grants.*

Revocation or annulment for just cause.

"Just cause."

**234.** The grant of probate or letters of administration may be revoked or annulled for just cause.

*Explanation.*—Just cause is—

*1st,* that the proceedings to obtain the grant were defective in substance;

*2nd,* that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

*3rd,* that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

*4th,* that the grant has become useless and inoperative through circumstances.

*Illustrations.*

(*a*) The Court by which the grant was made had no jurisdiction.

(*b*) The grant was made without citing parties who ought to have been cited.

(*c*) The will of which probate was obtained was forged or revoked.

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[a] 12 Beng. 428. [b] 12 Beng. 428: see Act No. XXI of 1870, sec. 6.
[c] See Act No. XXI of 1870, sec. 6.

(*d*) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(*e*) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(*f*) Since probate was granted, a later will has been discovered.

(*g*) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(*h*) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

## PART XXXI.

### Of the Practice in granting and revoking Probates and Letters of Administration.[a]

**235.** The District Judge shall have jurisdiction in granting and revoking[b] probates and letters of administration in all cases within his district.

Jurisdiction of District Judge in granting and revoking probates, &c.

**236.** The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge's powers as to grant of probate and administration.

**237.** The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

District Judge may order person to produce testamentary papers.

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same,

and such person shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

**238.** The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, except as herein-

Proceedings of District Judge's Court in relation to probate and

[a] So much of this Part as relates to grants of probate and letters of administration with the will annexed applies to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay, Act No. XXI of 1870.

[b] 2 N. W. P. 268.

administration.

after otherwise provided, be regulated so far as the circumstances of the case will admit by the Code of Civil Procedure.

When and how District Judge to interfere for protection of property.

**239.** Until probate be granted of the will of a deceased person, or an administrator of his estate be constituted, the District Judge within whose jurisdiction any part of the property of the deceased person is situate, is authorized and required to interfere for the protection of such property, at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.

When probate or administration may be granted by District Judge.

**240.** Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it shall appear by a petition verified as hereinafter mentioned, of the person applying for the same, that the testator or intestate, as the case may be, at the time of his decease, had a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

Disposal of application made to Judge of district in which deceased had no fixed abode.

**241.** When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or where the application is for letters of administration, to grant them absolutely, or limited to the property within his own jurisdiction.

Conclusiveness of probate or letters of administration.

**242.** Probate or letters of administration shall have effect over all the property and estate, moveable or immoveable, of the deceased, throughout the province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

Effect of unlimited probates, &c., granted by High Court.

[a] Provided that probates and letters of administration granted by a High Court after the first day of April, 1875, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

Transmission of certificate by High Court granting probate, &c., to other Courts.

**242 A.**[b] Whenever a grant of probate or letters of administration is made by a High Court with such effect as last aforesaid, the Registrar, or such other officer as the High Court making the grant appoints in this behalf, shall send to each of the other High Courts a certificate to the following effect:—

I, *A. B.*, Registrar [*or as the case may be*] of the High Court of Judicature at [*or as the case may be*], hereby certify that

[a, b] See Act No. XIII of 1875.

on the day of 187 the High Court of Judicature at [*or as the case may be*] granted probate of the will [*or* letters of administration of the estate] of *C. D.*, late of deceased, to *E. F.* of and *G. H.* of , and that such probate [*or* letters] has [*or* have] effect over all the property of the deceased throughout the whole of British India;

and such certificate shall be filed by the High Court receiving the same.

**243.** The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Conclusiveness of application for probate or administration, if properly made and verified.

**244.** Application for probate shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will annexed, and stating

the time of the testator's death,

that the writing annexed is his last will and testament,

that it was duly executed, and

that the petitioner is the executor therein named;

and in addition to these particulars, when the application is to the District Judge, the petition shall further state that the deceased at the time of his death had his fixed place of abode, or had some property, moveable or immoveable, situate within the jurisdiction of the Judge.

Petition for probate.

**245.** In cases wherein the will is written in any language other than English or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or if the will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:—

"I (*A B*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

In what cases translation of will to be annexed to petition.

Verification of translation by person other than Court translator.

**246.** Applications for letters of administration shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death,

Petition for letters of administration.

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

that the deceased left some property within the jurisdiction of the District Judge to whom the application is made, and

the amount of assets which are likely to come to the petitioner's hands.

Additional statements in petition for probate, &c.

**246A.**[a] Every person applying to a High Court for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by section 244 and section 246 of this Act, that to the best of his belief no application has been made to any other High Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the High Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the High Court to which any application is made under the proviso to section 242 of this Act may, if it think fit, reject the same.

Petition for probate or administration to be signed and verified.

**247.** The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

"I *(A B)*, the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate, by one witness to will.

**248.** Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following:—

"I *(C D)*, one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*), (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

Punishment for false averment in petition or declaration.

**249.** If any petition or declaration which is hereby required to be verified shall contain any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

District Judge may examine petitioner in person,

**250.** In all cases it shall be lawful for the District Judge, if he shall think proper,

[a] See Act No. XIII of 1875.

to examine the petitioner in person, upon oath or solemn affirmation, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge issuing the same may direct.

require further evidence,

and issue citations to inspect proceedings.

Publication of citation.

**251.** Caveats against the grant of probate or administration may be lodged with the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to any other Judge to whom it may appear to the District Judge expedient to transmit the same.

Caveat against grant of probate or administration.

**252.** The caveat shall be to the following effect:—

"Let nothing be done in the matter of the estate of *A B*, late of , deceased, who died on the day of at without notice to *C D* of ".

Form of caveat.

**253.** No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge to whom the application has been made, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

After entry of caveat, no proceeding taken on petition until after notice to caveator.

**254.** When it shall appear to the Judge that probate of a will should be granted, he will grant the same under the seal of his Court in manner following:—

Grant of probate to be under seal of Court.

"I, Judge of the District of , hereby make known that on the day of in the year the last will of late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of a year next ensuing, and also to render a true account thereof."

Form of such grant.

**255.** And wherever it shall appear to the District Judge that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he will grant the same under the seal of his Court in manner following:—

Grant of letters of administration to be under seal of Court.

"I, , Judge of the District of , hereby make known that on the day of letters of admin-

Form of such grant.

istration (with *or* without the will annexed, *as the case may be*) of the property and credits of , late of , deceased, were granted to , the father (*or as the case may be*) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of one year next ensuing, and also to render a true account thereof."

Administration-bond.

**256.** Every person to whom any grant of administration shall be committed shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge shall from time to time by any general or special order direct.

Assignment of administration-bond.

**257.** The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some person, his executors or administrators, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Time for grant of probate and administration.

**258.** No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days from the day of the testator or intestate's death.

Filing of original wills of which probate or administration with will annexed granted.

**259.** Every District Judge shall file and preserve all original wills of which probate or letters of administration with the will annexed may be granted by him among the records of his Court, until some public registry for wills is established; and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or administration alone to sue, &c., until same revoked.

**260.** After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

**261.** In any case before the District Judge in which there is contention,[a] the proceedings shall take, as nearly as may be, the form of a regular suit,

[a] See 2 N. W. P., 268.

according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

**262.** Where any probate is or letters of administration are revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same; Payment to executor or administrator before probate or administration revoked.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him, which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made. Right of such executor or administrator to recoup himself.

**263.** Every order made by a District Judge by virtue of the powers hereby conferred upon him, shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals. Appeals from orders of District Judge.

**264.** The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge. Concurrent jurisdiction of High Court.

## PART XXXII.

### Of Executors of their own Wrong.[a]

**265.** A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong. Executor of his own wrong.

*Exceptions.* First.—Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

Second.—Dealing in the ordinary course of business with goods of the deceased received from another, does not make an executor of his own wrong.

*Illustrations.*

(*a*) A uses or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy, or receives payment of the debts of the deceased. He is an executor of his own wrong.

(*b*) A having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

[a] This Part does not extend to Hindús, Jainas, Síkhs, or Buddhists, Act No. XXI of 1870.

(*c*) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

Liability of executor of his own wrong.

**266.** When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

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## PART XXXIII.

### Of the Powers of an Executor or Administrator.[a]

In respect of causes of action surviving deceased, and rents due at death.

**267.** An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and to distrain for all rents due to him at the time of his death, as the deceased had when living.

Demands and rights of action of or against deceased, survive to and against executor or administrator.

**268.** All demands whatsoever and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

*Illustrations.*

(*a.*) A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(*b.*) A sues for divorce. A dies. The cause of action does not survive to his representative.

Power of executor or administrator to dispose of property.

**269.** An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he may think fit.

*Illustrations.*

(*a.*) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it. The sale is valid.

(*b.*) The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased. The mortgage is valid.

Purchase by executor or administrator of deceased's property.

**270.** If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

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[a] So far as it relates to an executor and an administrator with the will annexed, this Part applies to wills made by Hindús, &c., on or after 1st September 1870, in the Lower Provinces and in the towns of Madras and Bombay, Act No. XXI of 1870, sec. 2.

**271.** When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration.

Powers of several executors or administrators, exercisable by one.

*Illustrations.*

(*a.*) One of several executors has power to release a debt due to the deceased.

(*b.*) One has power to surrender a lease.

(*c.*) One has power to sell the property of the deceased, moveable or immoveable.

(*d.*) One has power to assent to a legacy.

(*e.*) One has power to endorse a promissory note payable to the deceased.

(*f.*) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

**272.** Upon the death of one or more of several executors or administrators, all the powers of the office become vested in the survivors or survivor.

Survival of powers on death of one of several executors or administrators.

**273.** The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator of effects unadministered.

**274.** An administrator during minority has all the powers of an ordinary administrator.

Powers of administrator during minority.

**275.** When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Powers of married executrix or administratrix.

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## PART XXXIV.

### Of the Duties of an Executor or Administrator.[a]

**276.** It is the duty of an executor to perform the funeral of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral.

**277.** An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same may have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date

Inventory and account.

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[a] So far as it relates to an executor and an administrator with the will annexed, this Part applies to wills made by Hindús, &c., on or after 1st September 1870, in the Lower Provinces and in the towns of Madras and Bombay, Act No. XXI of 1870, section 2.

aforesaid, exhibit an account of the estate, showing the assets that may have come to his hands, and the manner in which they have been applied or disposed of.

Inventory to include property in any part of British India.

**277A.**[a] In all cases where it is sought to obtain a grant of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or the person applying for administration after the first day of April, 1875, to the effects, of any person dying in British India and leaving property in more than one province shall include in the inventory of the effects of the deceased his moveable or immoveable property situate in each of the provinces:

And the value of such property situate in the said provinces, respectively, shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

As to property of, and debts owing to, deceased.

**278.** The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

Expenses to be paid before all debts.

**279.** Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid next after such expenses.

**280.** The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Wages for certain services to be next paid, and then other debts.

**281.** Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan, or domestic servant are next to be paid, and then the other debts of the deceased.

Save as aforesaid, all debts to be paid equally and rateably.

**282.** Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account.

But the executor or administrator shall pay all such debts[b] as he knows[c] of, including his own, equally and rateably[d], as far as the assets of the deceased will extend.

Application of moveable property to payment of debts, where domicile not in British India.

**283.** If the domicile of the deceased was not in British India, the application of his moveable property to the payment of his debts is to be regulated by the law of the country in which he was domiciled.

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[a] See Act No. XIII of 1875, section 5.

[b] A liability to pay calls is a debt, 8 Bomb., O. C. J., 20.

[c] *i. e.*, actually, not constructively, 8 Bomb., O. C. J., 20.

[d] 8 Bomb., O. C. J., 20.

*Illustration.*

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 10,000 rupees, immoveable property to the value of 5,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The debts on the instruments under seal are to be paid in full out of the moveable-estate, and the proceeds of the immoveable estate are to be applied as far as they will extend towards the discharge of the debts not under seal. Accordingly, one-half of the amount of the debts not under seal is to be paid out of the proceeds of the immoveable estate.

Creditor paid in part under section 283 to bring payment into account before sharing in proceeds of immoveable property.

**284.** No creditor who has received payment of a part of his debt by virtue of the last preceding section shall be entitled to share in the proceeds of the immoveable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

*Illustration.*

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 5,000 rupees, and immoveable property to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The creditors holding instruments under seal receive half of their debts out of the proceeds of the moveable estate. The proceeds of the immoveable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts has been discharged. This will leave 5,000 rupees, which are to be distributed rateably amongst all the creditors without distinction in proportion to the amount which may remain due to them.

Debts to be paid before legacies.

**285.** Debts of every description must be paid before any legacy.

Executor or administrator not bound to pay legacies without indemnity.

**286.** If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Abatement of general lega-

**287.** If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions,

Executor not to pay one legatee in preference to another.

and the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Non-abatement of specific legacy when assets sufficient to pay debts

**288.** Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Right under demonstrative legacy, when assets sufficient to pay debts and necessary expenses.

**289.** Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Rateable abatement of specific legacies.

**290.** If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

*Illustration.*

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

Legacies treated as general for purpose of abatement.

**291.** For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

## PART XXXV.

### Of the Executor's Assent to a Legacy. [a]

Assent necessary to complete legatee's title.

**292.** The assent of the executor is necessary to complete a legatee's title to his legacy.

*Illustrations.*

(*a*) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(*b*) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

Effect of executor's assent to specific legacy.

**293.** The assent of the executor to a specific bequest shall be sufficient to devest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Nature of assent.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

*Illustrations.*

(*a*) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

[a] So far as it relates to an executor and an administrator with the will annexed, this Part applies to wills made by Hindús, &c., on or after 1st September 1870, in the Lower Provinces and in the towns of Madras and Bombay, Act No. XXI of 1870, sec. 2.

(*b*) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c*) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d*) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e*) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

Conditional assent.

**294.** The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

*Illustrations.*

(*a*) A bequeaths to B his lands of Sultánpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest, on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid There is no assent.

(*b*) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

Assent of executor to his own legacy.

**295.** When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Implied assent.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

*Illustration.*

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

Effect of executor's assent.

**296.** The assent of the executor to a legacy gives effect to it from the death of the testator.

*Illustrations.*

(*a*) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(*b*) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor when to deliver legacies.

**297.** An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

*Illustration.*

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

## PART XXXVI.

### Of the Payment and Apportionment of Annuities.[a]

Commencement of annuity when no time fixed by will.

**298.** Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

When annuity, to be paid quarterly or monthly, first falls due.

**299.** Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

Dates of successive payments when first payment directed to be made within given time, or on day certain.

**300.** Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Apportionment where annuitant dies between times of payment.

and if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

## PART XXXVII.

### Of the Investment of Funds to provide for Legacies.[a]

Investment of sum bequeathed where legacy, not specific, given for life.

**301.** Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of general legacy, to be paid at future time.

**302.** Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Intermediate interest.

The intermediate interest shall form part of the residue of the testator's estate.

[a] So far as it relates to an executor and an administrator with the will annexed, this Part applies to wills made by Hindús, &c., on or after 1st September 1870, in the Lower Provinces and in the towns of Madras and Bombay, Act No. XXI of 1870, sec. 2.

**303.** Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased, or,

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

Procedure when no fund charged with, or appropriated to, annuity.

**304.** Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee on his giving sufficient security for the payment of the legacy if it shall become due.

Transfer to residuary legatee of contingent bequest.

**305.** Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in such securities as the High Court may for the time being regard as good securities, shall be converted into money and invested in such securities.

Investment of residue bequeathed for life, without direction to invest in particular securities.

**306.** Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Investment of residue bequeathed for life, with direction to invest in specified securities.

**307.** Such conversion and investment as are contemplated by the two last preceding sections shall be made at such times and in such manner as the executor shall in his discretion think fit;

and until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Time and manner of conversion and investment.

Interest payable until investment.

**308.** Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no discretion in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge, by whom the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards;

and if the legatee be a ward of the Court of Wards the legacy shall be paid into that Court to his account, and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

and such money when paid in shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

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## PART XXXVIII.

### Of the Produce and Interest of Legacies.[a]

Legatee's title to produce of specific legacy.

**309.** The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

*Exception.*—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

*Illustrations.*

(*a*) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b*) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Residuary legatee's title to produce of residuary fund.

**310.** The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

*Exception.*—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

*Illustrations.*

(*a*) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

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[a] So far as it relates to an executor and an administrator with the will annexed, this Part applies to wills made by Hindús, &c., on or after 1st September 1870, in the Lower Provinces and in the towns of Madras and Bombay, Act No. XXI of 1870, section 2.

(*b*) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue The income which has accrued in respect of it since the testator's death goes as undisposed of.

**311.** Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Interest when no time fixed for payment of general legacy.

*Exceptions.*—(1.) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2.) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3.) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

**312.** Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

Interest when time fixed.

The interest up to such time forms part of the residue of the testator's estate.

*Exception.*—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance.

**313.** The rate of interest shall be four per cent. per annum.

Rate of interest.

**314.** No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

No interest on arrears of annuity within first year after testator's death.

**315.** Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

Interest on sum to be invested to produce annuity.

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## PART XXXIX.

### Of the Refunding of Legacies.[a]

**316.** When an executor has paid a legacy under the order of a Judge, he is entitled to call upon the legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

Refund of legacy paid under Judge's orders.

**317.** When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

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[a] So far as it relates to an executor and an administrator with the will annexed, this Part applies to wills made by Hindús, &c., on or after 1st September 1870, in the Lower Provinces and in the towns of Madras and Bombay, Act No. XXI of 1870, sec. 2.

Refund when legacy become due on performance of condition within further time allowed under section 124.

**318.** When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed under the one hundred and twenty-fourth section, for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

When each legatee compellable to refund in proportion.

**319.** When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

Distribution of assets.

**320.** Where an executor or administrator has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution;

Creditor may follow assets.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Within what period creditor may call upon legatee to refund.

**321.** A creditor who has not received payment of his debt may, within two years after the death of the testator or one year after the legacy has been paid, call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies; and whether the payment of the legacy by the executor was voluntary or not.

When legatee not satisfied or compelled to refund under section 321, cannot oblige one paid in full to refund.

**322.** If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When unsatisfied legatee must first proceed against executor, if solvent.

**323.** If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

**324.** The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Limit to refunding of one legatee to another.

*Illustration.*

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

**325.** The refunding shall in all cases be without interest.

Refunding to be without interest.

**326.** The surplus or residue of the deceased's property after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Residue after usual payments to be paid to residuary legatee.

## PART XL.

### Of the Liability of an Executor or Administrator for Devastation.[a]

**327.** When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Liability of executor or administrator for devastation.

*Illustrations.*

(*a*) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(*b*) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(*c*) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

**328.** When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

For neglect to get in any part of property.

*Illustrations.*

(*a*) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(*b*) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount.

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[a] So far as it relates to an executor and an administrator with the will annexed, this Part applies to wills made by Hindús, &c., on or after 1st September 1870, in the Lower Provinces and in the towns of Madrás and Bombay, Act No. XXI of 1870, sec. 2.

## PART XLI.

### MISCELLANEOUS.

**329.** *Repealed by Act No. VII of* 1870.

**330.** *Repealed by Act No. XXIV of* 1867.

Succession to property of Hindús, &c., and certain wills, intestacies and marriages not affected.

**331.** The provisions of this Act shall not apply to intestate or testamentary succession to the property of any Hindú,[a] Muhammadan or Buddhist;[a] nor shall they apply to any will made, or any intestacy occurring, before the first day of January 1866.

The fourth section shall not apply to any marriage contracted before the same day.

Power of Governor General to exempt any race, sect or tribe in British India from operation of Act.

**332.** The Governor General of India in Council shall from time to time have power, by an order, either retrospectively from the passing of this Act, or prospectively, to exempt from the operation of the whole or any part of this Act the members of any race, sect or tribe in British India or any part of such race, sect[b] or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of this Act, or of the part of the Act mentioned in the order.

The Governor General of India in Council shall also have power from time to time to revoke such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations made under this section shall be published in the *Gazette of India.*

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## ACT No. XI OF 1865.[c]

*Received the Governor General's assent on the* 15*th March* 1865.

### An Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil jurisdiction of the High Courts of Judicature.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature; It is enacted as follows:—

Interpretation-clause.

**1.** In this Act, unless there be something repugnant in the subject or context—

Number.

Words importing the singular number include the plural, and words importing the plural number include the singular:

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[a] Now see Act No. XXI of 1870. See, too, 2 Beng., O. C. J., 79.

[b] Under this section Native Christians in the Province of Coorg have been exempted from the provisions of the Succession Act retrospectively from 16th March 1865—*Gazette of India,* July 25th, 1868, p. 1094.

[c] Declared to apply to the whole of British India except the Scheduled Districts, Act No. XV of 1874.

Words importing the masculine gender include females: Gender.

"Judge" includes an Acting Judge: "Judge."

"Section" means a section of this Act: "Section."

"Court of Small Causes" means a Court constituted under this Act: "Court of Small Causes."

And, in every part of British India in which this Act operates, "Local Government" denotes the person authorized to administer the executive government in such part, and "Local Government."

"High Court" denotes the highest civil Court of appeal having jurisdiction therein. "High Court."

2. [a]Any Courts of Small Causes now in existence which shall have been constituted under Act No. XLII of 1860, shall be considered as constituted under this Act within the territorial limits of the jurisdiction assigned to such Courts under the said Act XLII of 1860 or which may hereafter be assigned to them under the next following section, and shall be subject to all the provisions contained herein.[b] Courts constituted under Act XLII of 1860.

3. The Local Government[c] may, with the previous sanction of the Governor General of India in Council, constitute for the trial of suits under this Act, Courts of Small Causes with such establishment of officers as may be necessary, at any places within the territories under such Government. Power to constitute Small Cause Courts.

Whenever a Court of Small Causes shall be so constituted, the Local Government shall fix the territorial limits of the jurisdiction of such Court, and may from time to time alter the limits so fixed. Local limits of jurisdiction fixed by Local Government.

The Local Government may abolish any Court of Small Causes.

4. Every Court of Small Causes shall use a seal bearing the following inscription in English and in the language of the Court—"Court of Small Causes of ",—and shall be subject to the general control and orders of the High Court. Seal of Court.

5. Courts of Small Causes shall be held at such place or places within the local limits of their respective jurisdictions, as shall from time to time be appointed by the Local Government. Control of High Court. Places where Courts to be held.

6. The following are the suits which shall be cognizable by Courts of Small Causes, namely, claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage or demand does not exceed in amount or value the sum of five hundred rupees whether on balance of account or otherwise: Suits cognizable by Small Cause Courts.

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a, b See Act No. XIV of 1870.

c This does not include a Chief Commissioner, 6 Beng. 201. But in Burma now see the the Burma Courts Act.

Proviso.

Provided that no action shall lie in any such Court—

(1) on a balance of partnership-account, unless the balance shall have been struck by the parties or their agents:

(2) for a share or part of a share under an intestacy, or for a legacy or part of a legacy under a will:

(3) for the recovery of damages on account of an alleged personal injury, unless actual pecuniary damage shall have resulted from the injury:

(4) for any claim for the rent of land or other claim for which a suit may now be brought before a revenue-officer, unless, as regards arrears of rent for which such suit may be brought, the Judge of the Court of Small Causes shall have been expressly invested by the Local Government with jurisdiction over claims to such arrears.

Power to extend jurisdiction of Small Cause Courts to 1,000 rupees.

7. The Local Government may extend the jurisdiction of any Court of Small Causes, in suits of the nature described in the last preceding section and thereby made cognizable by Courts of Small Causes, to an amount not exceeding one thousand rupees.

Jurisdiction of Courts.

8. Courts of Small Causes may try all such suits as are described in the sixth section and thereby made cognizable by Courts of Small Causes,

if the defendant at the time of the commencement of the suit shall dwell, or personally work for gain or carry on business, within the local limits of the jurisdiction of such Court; or

if the cause of action arose within the said local limits, and the defendant, at the time of the commencement of the suit, shall by his servant or agent carry on business or work for gain within those limits.

*Explanations.—(a).* Where a person has a permanent dwelling at one place, and also a lodging at another place for a temporary purpose only, he shall be deemed to dwell at both places in respect of any cause of action arising at the place where he has such temporary lodging:

(*b.*) A corporation or company shall be deemed to carry on business at its sole or principal office, or at any place where it has also a subordinate office in respect of any cause of action arising at such place:

(*c.*) The "business" contemplated in this section must be carried on at some fixed place for at least a certain time.

Suits against Government.

9. Suits against the Local Government or against the Government of India shall be brought in the Court having jurisdiction at the place which is the seat of such Government.

Suits against Secretary of State.

10. Suits against the Secretary of State shall be brought in the Court having jurisdiction at the place which is the seat of the Local Government for the territories in which the cause of action arose.

**11.** Service of a summons issued under this Act, on any servant or agent by whom the defendant may carry on business or work for gain, shall be deemed to be good service upon the defendant, provided that such agent or servant himself, at the time of such service, personally carries on the business or work for gain for the defendant, within the local limits of the jurisdiction of the Court in which the suit is brought.

Substituted service of summons.

**12.** Wherever a Court of Small Causes is constituted under this Act, no suit cognizable by such Court shall be heard or determined in any other Court having jurisdiction within the local limits of the jurisdiction of such Court of Small Causes:

Suits cognizable by Court of Small Causes not to be heard by other Court having jurisdiction within local limits.

Provided that nothing in this Act shall be held to take away the jurisdiction which a Magistrate, or a person exercising the powers of a Magistrate, or an Assistant or Deputy Magistrate, can now exercise in regard to debts or other claims of a civil nature;

Saving of jurisdiction of Magistrates as to debts;

or the jurisdiction which can be exercised by Village Munsifs, or Village or District-panchâyats, under the provisions of the Madras Code;

of Village Munsifs and panchâyats in Madras;

or by military Courts of Requests, or by Cantonment Joint Magistrates invested with civil jurisdiction under Act III of 1859 *(for conferring civil jurisdiction in certain cases upon Cantonment Joint Magistrates and for constituting those Officers Registers of Deeds)*;

of military Courts of Requests;

or by a single officer duly authorized and appointed under the rules in force in the presidencies of Madras and Bombay respectively, for the trial of small suits in military bázárs, in cantonments, and stations occupied by the troops of those presidencies respectively;

of officers appointed to try small suits in Madras and Bombay;

or by panchâyats in regard to suits against military persons, according to the rules in force in the presidency of Madras.

or of military panchâyats in Madras.

**13.** Every Court of Small Causes shall (except as hereinafter provided) be held before a Judge appointed by the Local Government, and who shall receive such salary as the Governor General of India in Council may from time to time determine.

Judge of Court.

Such Judge shall be the Judge either of one such Court or of two or more such Courts as the Local Government shall appoint, but except as hereinafter provided, he shall not exercise any civil jurisdiction except under the provisions of this Act.

**14.** It shall be lawful for any Judge who is the Judge of two or more Courts of Small Causes to fix, subject to the orders of the Local Government, or, in territories under the immediate administration of the Government of India, of the Chief Commissioner or other principal civil authority, the times

Power to Judge of several Courts to fix times and dates of circuits and sittings.

at which he will go on circuit, and the dates on which his sittings in the several Courts of which he is Judge shall commence.

Publication of notice of times and dates.

Notice of such times and dates shall be published in the official Gazette and at such places and in such manner as the Local Government or Chief Commissioner or other authority as aforesaid shall think fit to direct in that behalf.

Local Government may invest person, for limited period, with powers of Small Cause Court Judge.

**15.** The Local Government may from time to time invest any person with the powers of a Judge of a Court of Small Causes under this Act for a limited period, or for specific periods in each year only, and declare in what Court or Courts of Small Causes such powers shall be exercised by such person.

Powers to be exercised by such persons.

Any person so invested shall, in all Courts in which the Local Government shall have declared that he shall exercise the said powers, have all such powers as might in such Courts be exercised by a Judge of the said Courts appointed under the thirteenth section.

Jurisdiction to be exercised by such persons in Court in which there is a Judge.

**16.** If it shall be declared by the Local Government that any person invested under the last preceding section with the powers of a Judge of a Court of Small Causes, shall exercise those powers in a Court of which there is a Judge appointed under the thirteenth section, the person so invested shall exercise a jurisdiction concurrent with that of such Judge.

Power to make rules for distribution of business.

The Local Government shall from time to time make rules to provide for the distribution of business between any person so invested and any Judge in whose Court it may be declared that such person shall exercise his powers, and generally for regulating and defining the duties and relative positions of Judges of Courts of Small Causes and persons so invested as aforesaid:

Provided always that no such rule shall be in any way inconsistent with the provisions of this Act.

Remuneration of Judges and of persons invested with powers and restriction from practising within limits.

**17.** Every person invested with the powers of a Judge of a Court of Small Causes under the fifteenth section shall receive such remuneration as the Governor General in Council shall from time to time determine.

It shall not be lawful for any such person to practise as a barrister, attorney, vakíl, pleader or law-agent in any district or place within the territorial limits of which he is empowered to exercise the powers with which he is invested.

Summons.

**18.** In all suits under this Act the summons to the defendant shall be for the final disposal of the suit, and no written statement other than the plaint shall be received unless required by the Court.

Power to direct immediate execu-

**19.** When a decree is passed in any suit of the nature and amount cognizable under this Act, the Court passing the decree may, at the same time

that it passes the decree, on the verbal application of the party in whose favour the decree is given, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court passing the decree, or against the movable property of the judgment-debtor within the same limits.

tion against judgment-debtor's person or movable property.

If the warrant be directed against the movable property of the judgment-debtor, it may be general against any personal property of the judgment-debtor wherever it may be found within the local limits of the jurisdiction of the Court, or special against any personal property belonging to the judgment-debtor within the same limits, and which shall be indicated by the judgment-creditor.

Warrant against movable property.

**20.** In the execution of a decree under this Act, if, after the sale of the movable property of a judgment-debtor, any portion of a judgment-debt shall remain due, and the holder of the judgment desire to issue execution upon any immovable property belonging to the judgment-debtor, the Court, on the application of the holder of such judgment, shall grant him a copy of the judgment and a certificate of any sum remaining due under it;

Execution against immovable property, if movable property not sufficient.

and on the presentation of such copy and certificate to any Court of Civil Judicature having general jurisdiction in the place in which the immovable property of the judgment-debtor is situate, such Court shall proceed to enforce such judgment according to its own rules and mode of procedure in like cases.

**21.** In suits tried under this Act, all decisions and orders of the Court shall be final:

Decisions final.

Provided that in any case in which a decree shall be passed *ex parte* against a defendant, he may within thirty days after any process for enforcing the decree has been executed give notice to the Court by which the decree was passed, of his intention to apply to the Court at its next sitting for an order to set it aside:

Notice of application to to set aside *ex parte* decree.

and if, on the application being made to the Court at its next sitting, it shall be proved to the satisfaction of the Court that the summons was not duly served, or that the defendant was prevented by any sufficient cause from appearing when the suit was heard, the Court shall pass an order setting aside the decree and shall appoint a day for proceeding with the suit, upon such terms as to costs or otherwise as shall to the Court seem proper:

When such decree may be set aside.

Provided also that it shall be competent to the Court, if it shall think fit, in any case not falling within the proviso last aforesaid, to grant a new trial, if notice of the intention to apply for the same at the next sitting of the Court be given to the Court within the period of seven days from the date of the decision, and if the same be applied for at the next sitting of the Court;

New trial.

Deposit of debt and costs.

but no uch new trial shall be granted where the party applying for the same is the defendant or one of the defendants, unless he shall with his notice of application deposit in Court the amount for which a decree shall have been passed against him, including the costs (if any) of the opposite party.

Power to refer questions to High Court.

22. If in the trial of any suit under this Act any question of law, or usage having the force of law, or any question as to the construction of a document which construction may affect the merits of the decision, shall arise, the Court, in suits for an amount not exceeding five hundred rupees, may, either of its own motion or on the application of any of the parties to the suit, and in suits for an amount greater than five hundred rupees, shall draw up a statement of the case and refer it, with the Court's own opinion, for the decision of the High Court.[a]

Power to pass decree contingent upon opinion of High Court. Stay of execution.

23. The Court may proceed in the case notwithstanding such reference, and may pass a decree contingent upon the opinion of the High Court on the point referred; but no execution shall be issued in any case in which a reference shall have been made, until the receipt of the order of the High Court.

High Court to notify day for hearing.

24. The High Court shall fix an early day for the hearing of the case, and shall cause notice of such day to be placed in the Court-house.[b]

Appearance of parties.

25. The parties to the case may appear and be heard in the High Court in person or by pleader.[c]

Transmission of copy of High Court udgment.

26. The High Court, when it has heard and considered the case, shall send a copy of its judgment, under the seal of the Court, to the Court by which the reference was made; and such Court shall, on the receipt of the copy, proceed to dispose of the case conformably to the decision of the High Court.[d]

Disposal of case.

Costs of reference.

27. Costs, if any, consequent on the reference of a case for the opinion of the High Court, shall be costs in the suit.[e]

Power to alter or set aside decree of Court making reference.

28. When a case is referred to the High Court under the twenty-second section, the High Court may alter, cancel or set aside any order or decree which the Court stating the case may have made in the suit out of which the reference arose, and may make such order as the justice of the case may require.[f]

Power to appoint principal Court.

29. Whenever more Courts than one are constituted in any district under this Act, the Local Government may appoint one of the same Courts to be the principal Court of Small Causes in such district.

Sitting of Judge of principal Court with Judge of other Court in district for trial of suits.

30. The Judge of the principal Court of Small Causes in any district may sit with the Judge of any other Court of Small Causes in the same district, or with a person invested with the powers of a Judge as aforesaid in such Court, for the trial and determination of any suit cognizable under this Act,

a, b, c, d, e, f See Act No. X of 1867.

and shall so sit for the trial and determination of any such suit which the Judge of such other Court or other person as aforesaid may reserve for trial by himself and the Judge of the principal Court of Small Causes.

Power to make rules providing that two Judges shall sit together for trial of certain suits.

**31.** The Local Government may from time to time make rules providing that, in such cases as shall be prescribed in such rules, two Judges or a Judge and a person invested with the powers of a Judge as aforesaid, shall sit together and hear and dispose of suits and applications.

Decision when two Judges concur.

**32.** If two Judges, or a Judge and a person invested with the powers of a Judge as aforesaid, sit together and they concur in the decision or order to be passed, such decision or order shall be the decision or order of the Court;

Procedure when they differ.

but if they shall differ on a point of law, or usage having the force of law, or in construing a document the construction of which may affect the merits of the decision, they shall submit a case for the opinion of the High Court on the point of difference between them, in the manner prescribed in the twenty-second section of this Act;

Provisions applied to reference under section.

and the provisions applicable to a reference to the High Court, contained in the twenty-second, twenty-third, twenty-fourth, twenty-fifth and twenty-sixth sections of this Act, shall be applicable to every reference made under this section.

Casting voice in case of difference between two Judges.

**33.** If two Judges differ on any matter other than the matters abovementioned, the Judge who is senior in respect of date of appointment as a Judge of a Court of Small Causes shall have the casting voice.

And between Judge and person invested with Judge's powers.

**34.** If a Judge and a person invested with the powers of a Judge as aforesaid differ on any matter other than the matters abovementioned, the Judge shall have the casting voice.

Appointment of registrar.

**35.** It shall be lawful for the Local Government to appoint to any Court of Small Causes an officer who shall be called the registrar of the Court, and who shall be paid such salary as shall from time to time be authorized in that behalf by the Governor General of India in Council.

Position of registrar.

**36.** The registrar of every Court of Small Causes shall be the chief ministerial officer of the Court.

Duties and powers.

In addition to any other duties and powers herein imposed or conferred upon the registrar, he shall, subject to the provisions contained in the next following section,

receive all plaints presented to the Court;

issue notice of suit to the defendants;

receive any documents which the parties may wish to put in; and

issue process for the attendance of their witnesses.

He shall likewise keep lists of all causes coming on for trial, and fix such days for their being heard respectively, as may seem to him fit.

He may also receive notices under the twenty-first section.

When registrar may reject defective plaint.

**37.** If, when the Judge is absent on duty and there is no person invested with the powers of a Judge as aforesaid, the registrar shall be of opinion that any plaint presented to the Court is defective in any of the particulars mentioned in sections twenty-seven to thirty-two, both inclusive, of the Code of Civil Procedure, he may reject the same.

Reversal of registrar's reception or rejection.

But it shall be lawful for the Judge or for any person invested with the powers of a Judge as aforesaid, to reject any plaint which may have been received by the registrar, and to receive any plaint which may have been rejected by him:

Proviso.

Provided that such reception or rejection (as the case may be) by the registrar shall, in the opinion of such Judge or other person empowered as aforesaid, have been erroneous, and that an application to set the same aside shall be made at the first subsequent sitting in the said Court of a Judge or other person duly empowered as aforesaid.

When registrar may receive and enter up judgments by confession.

**38.** If a suit shall have been instituted in a Court of Small Causes, and the defendant shall have been duly summoned to appear and answer therein, and if before the day appointed for the hearing of such suit the defendant or his agent duly authorized in that behalf shall appear before the registrar of the Court, and admit the plaintiff's claim and apply for leave to confess judgment, it shall be lawful for the registrar, if the Judge be absent on duty and there be no person invested with the powers of a Judge as aforesaid, to enter on the record a decree for the plaintiff by confession, and such decree shall have the like force and effect as a decree for the plaintiff would have had if the suit had been heard by the Judge and a decree passed by him for the plaintiff.

Proviso.

Provided that in every case, before passing a decree under this section, it shall be the duty of the registrar fully to satisfy himself of the service of the summons, of the identity of the parties, and of their good faith in appearing before him.

Execution of decrees by registrar.

**39.** The registrar, if the Judge be absent on duty and there be no person invested with the powers of a Judge as aforesaid, shall also receive applications for the execution of decrees passed by the Judge, or other person empowered as aforesaid, of the Court of which he is the registrar, and, subject to any orders which he may receive from the Judge or such other person, shall execute such decrees in the same manner as the Judge might execute them.

No appeal shall lie from any order passed by the registrar under this section; but the Judge or other person empowered as aforesaid may, within three calendar months from the making of the order, of his own motion reverse or modify it.

Bar of appeal.

Reversal by Judge.

**40.** The Local Government may invest any registrar with the powers of a Judge of a Court of Small Causes in suits arising within the local limits of the jurisdiction of the Court of which he is the registrar, provided that the amount or value of the claim shall not exceed twenty rupees.

Power to invest registrar with Judge's powers.

The registrar shall exercise such powers subject to the general control of the Judge, or, when there is no Judge, of any person invested with the powers of a Judge as aforesaid.

Control over registrar.

**41.** The suits cognizable by the registrar under the last preceding section shall be set down for hearing before such registrar, and he shall hear and determine such suits and execute the decrees made therein, in such manner in all respects as the Judge of the Court might hear, determine and execute the same respectively:

Hearing of suits cognizable by registrar.

Provided that the Judge, or, when there is no Judge, the person invested with the powers of a Judge, whenever he thinks proper, may transfer to his own file any suit on the file of the registrar, and may hear and determine the same.

Transfer from registrar's to Judge's file.

**42.** No appeal shall lie from any order or decision made or passed by the registrar, in any case heard or disposed of by him;

No appeal from registrar's decision.

but in any case in which the registrar shall entertain any doubt upon any question of law, or usage having the force of law, or as to the construction of a document which construction may affect the merits of the decision, he shall be at liberty to state a case for the opinion of the Judge, or, when there is no Judge, of the person invested with the powers of a Judge as aforesaid, in like manner as the Judge may, under the twenty-second section of this Act, state a case for the opinion of the High Court;

When he may submit statement for opinion of Judge.

and all the provisions herein contained, relative to the stating of a case by the Judge, shall apply, *mutatis mutandis*, to the stating of a case by the registrar.

Provisions applied to reference.

**43.** A decree passed by a registrar under the thirty-eighth section may be set aside by the Judge of the Court, or, when there is no Judge, by the person invested with the powers of a Judge as aforesaid, in such manner and on such grounds only as it might be set aside if it were a decree passed at the hearing of the cause by the Judge or other person empowered as aforesaid.

Setting aside registrar's decree under section 38.

**44.** An officer to be styled the Clerk of the Court may be appointed to any Court of Small Causes on such salary as shall be authorized by the Governor General of India in Council.

Appointment and removal of Clerk of Court.

The appointment and removal of such officer shall rest with the Court, subject to the approval of the Local Government, or, in territories under the immediate administration of the Government of India, of the Chief Commissioner or other principal civil authority.

The registrar of any Court of Small Causes may also be the clerk of the Court.

Duties of clerk.

45. When a clerk is appointed to any Court of Small Causes, such clerk shall, subject to the orders of the Court and of the registrar if there be a registrar, issue all summonses, warrants, orders and writs of execution, and keep an account of all proceedings of the Court, and shall take charge of and keep an account of all monies payable or paid into or out of Court, and shall enter an account of all such monies in a book belonging to the Court to be kept by such clerk for that purpose.

High Court empowered to make rules of practice, &c.

46. The High Court shall have power to make and issue general rules for regulating the practice and proceedings of Courts of Small Causes, and also to prescribe forms for every proceeding in the said Courts for which it shall think that forms should be provided, and for keeping all books, entries and accounts to be kept by the officers, and from time to time to alter any such rule or form;

provided that such rules and forms be not inconsistent with the provisions of this Act or of any other law for the time being in force.

Provisions of Act VIII of 1859, applied.

47.[a] Except as hereinbefore provided, the provisions of the Code of Civil Procedure shall, so far as the same are or may be applicable, extend to all suits and proceedings under this Act.

Saving of Act XI of 1841, section 17.

48. Nothing in the second section of the said Act No. III of 1859, or the sixth, seventh and eighth sections of Act No. XXII of 1864 *(to make provision for the Administration of Military Cantonments)*, relating to the establishment of Courts of Small Causes in military cantonments, shall be held to affect so much of Act No. XI of 1841 *(for consolidating and amending the Regulations concerning Military Courts of Requests for Native Officers and soldiers in the service of the East India Company)* as declares that, in places beyond the frontier of the territories of the East India Company, actions of debt and other personal actions may be brought before the military Courts therein mentioned, against persons so amenable as therein mentioned, for any amount of demand.

Saving of jurisdiction of Courts of Requests.

49. Nothing in this Act, nor in the sixth, seventh and eighth sections of the said Act XXII of 1864, shall be held to affect the jurisdiction of any Court of Requests convened under the hundred and third section of the Stat-

[a] See Act No. VII o 1870 sec. 2

ute 27 Vic., cap. 3, or the corresponding section in any other Statute for the time being in force, for punishing mutiny and desertion, and for the better payment of the army and their quarters, or the powers of a commanding officer under any such Statute to assemble such Courts.

Reference in previous Acts to Act XLII of 1860 to be read as applying to this Act.

**50.** When in any Act passed prior to the coming into operation of this Act reference is made to Act XLII of 1860, such reference shall be read as applying to this Act, and when any procedure is directed to be in accordance with the provisions of Act XLII of 1860, such procedure shall be deemed to be directed to be in accordance with the provisions of this Act.[a]

Power to give Small Cause Court Judge powers of Principal Sadr Amín or Magistrate.

**51.** Whenever the state of business in any Court of Small Causes, the Judge of which shall be the Judge of such Court only, is not sufficient to occupy his time fully, the Local Government may invest him within such limits as it shall from time to time appoint, in addition to his powers as such Judge, with the powers of a Magistrate as defined in the Code of Criminal Procedure, or, in the Regulation Provinces, with the powers of a [b]Principal Sadr Amín, or, in the Non-Regulation Provinces, with the powers of an officer exercising the like or nearly the like powers as those of a [c]Principal Sadr Amín.

Power to give Small Cause Court Judge jurisdiction under Act X of 1859.

**52.** In the places in which the provisions of Act X of 1859[d] *(to amend the Law relating to the recovery of Rent in the Presidency of Fort William in Bengal)* are in force, the Local Government may empower any Judge of a Court of Small Causes to hear and determine, under the rules contained in the said Act X of 1859[d] applicable to trials before a collector, and subject to the same regular and special appeal, the claims cognizable under such Act arising within the local limits of the jurisdiction of such Court.

Any Judge so empowered shall exercise all the powers of a collector under the said Act X of 1859[d] except the power of hearing appeals.

Courts to furnish records, &c., called for by Government or High Court.

**53.** Courts of Small Causes shall comply with such requisitions as may from time to time be made by the Local Government or the High Court for records, returns and statements in such form and manner as such Government or Court may deem proper.

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[a] See Act No. X of 1863, section 1 (repealed by Act No. XIX of 1867): Act No. IV of 1864 repealed by Act No. VIII of 1868): Act No. XXII of 1864, section 44: Bengal Act No. II of 1862, sec. 2 (repealed by Act No. XII of 1873): Madras Act No IV of 1863 (repealed by Act No. III of 1873): Bombay Act No. VIII of 1863 (repealed by Act No. XII of 1873).

[b, c] See, in Bengal, Act No. VI of 1871, sec. 30, and, in Madras, Act No. III of 1873, sec. 29.

[d] In the North-Western Provinces, for "Act X of 1859," the words and figures "the North-Western Provinces Rent Act 1873," are substituted. See Act No. XVIII of 1873, sec. 2.

ACT No. XV OF 1865.

*Received the Governor General's assent on the 7th April* 1865.

# An Act to define and amend the law relating to Marriage and Divorce among the Pársís.[a]

Preamble.

WHEREAS the Pársí community has represented the necessity of defining and amending the law relating to marriage and divorce among Pársís; And whereas it is expedient that such law should be made conformable to the customs of the said community; It is enacted as follows:.

## I. *Preliminary.*

Short title.

1. This Act may be cited as "The Pársí Marriage and Divorce Act, 1865."

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context—

Number.

Words in the singular number include the plural, and words in the plural number include the singular:

"Priest."

"Priest" means a Pársí priest and includes Dastúr and Mobed:

"Marriage."

"Husband" and "Wife."

"Marriage" means a marriage between Pársís whether contracted before or after the commencement of this Act; and "Husband" and "Wife" respectively mean a Pársí husband and a Pársí wife:

"Section."

"Section" means a section of this Act:

"Chief Justice."

"Chief Justice" includes Senior Judge:

"Court."

"Court" means a Court constituted under this Act:

"British India."

"British India" means the territories which are or shall be vested in Her Majesty or her successors by the Statute 21 & 22 Vic., cap. 106, entitled "An Act for the better government of India;"

"Local Government."

And, in any part of British India in which this Act operates, "Local Government" means the person authorized to administer executive government in such part of India, or the chief executive officer of such part when it is under the immediate administration of the Governor General of India in Council, and when such officer shall be authorized to exercise the powers vested by this Act in a Local Government; and

"High Court."

"High Court" means the highest civil court of appeal in such part.

## II. *Of Marriages between Pársís.*

Requisites to validity of Pársí marriages.

3. No marriage contracted after the commencement of this Act shall be valid, if the contracting parties are related to each other in any of the degrees of consanguinity or affinity prohibited among Pársís and set forth in a table

[a] Declared to apply to the whole of British India, except the Scheduled Districts, Act No. XV of 1874: a needless declaration, see sec. 53.

which the Governor General of India in Council shall, after due enquiry, publish in the *Gazette of India*,[a] and unless such marriage shall be solemnized according to the Pársí form or ceremony called "Ásírvád" by a Pársí priest in the presence of two Pársí witnesses independently of such officiating

[a] The following Table was published in the *Gazette of India*, September 9, 1865, pp. 981, 982 :—

TABLE.

*A man shall not marry his*

1 Paternal grand-father's mother.
2 Paternal grand-mother's mother.
3 Maternal grand-father's mother.
4 Maternal grand-mother's mother.
5 Paternal grand-mother.
6 Paternal grand-father's wife.
7 Maternal grand-mother.
8 Maternal grand-father's wife.
9 Mother or step-mother.
10 Father's sister or step-sister.
11 Mother's sister or step-sister.
12 Sister or step-sister.
13 Brother's daughter or step-brother's daughter, or any direct lineal descendant of a brother or step-brother.
14 Sister's daughter or step-sister's daughter, or any direct lineal descendant of a sister or step-sister.
15 Daughter or step-daughter, or any direct lineal descendant of either.
16 Son's daughter or step-son's daughter, or any direct lineal descendant of a son or step-son.
17 Wife of son or of step-son, or of any direct lineal descendant of a son or step-son.
18 Wife of daughter's son or of step-daughter's son, or of any direct lineal descendant of a daughter or step-daughter.
19 Mother of daughter's husband.
20 Mother of son's wife.
21 Mother of wife's paternal grand-father.
22 Mother of wife's paternal grand-mother.
23 Mother of wife's maternal grand-father.
24 Mother of wife's maternal grand-mother.
25 Wife's paternal grand-mother.
26 Wife's maternal grand-mother.
27 Wife's mother or step-mother.
28 Wife's father's sister.
29 Wife's mother's sister.
30 Father's brother's wife.
31 Mother's brother's wife.
32 Brother's son's wife.
33 Sister's son's wife.

*A woman shall not marry her*

1 Paternal grnd-faather's father.
2 Paternal grand-mother's father.
3 Maternal grand-father's father.
4 Maternal grand-mother's father.
5 Paternal grand-father.
6 Paternal grand-mother's husband.
7 Maternal grand-father.
8 Maternal grand-mother's husband.
9 Father or step-father.
10 Father's brother or step-brother.
11 Mother's brother or step-brother.
12 Brother or step-brother.
13 Brother's son or step-brother's son, or any direct lineal descendant of a brother or step-brother.
14 Sister's son or step-sister's son, or any direct lineal descendant of a sister or step-sister.
15 Son or step-son, or any direct lineal descendant of either.
16 Daughter's son or step-daughter's son, or any direct lineal descendant of a daughter or step-daughter.
17 Husband of daughter or of step-daughter, or of any direct lineal descendant of a daughter or step-daughter.
18 Husband of son's daughter or of step-son's daughter, or of any direct lineal descendant of a son or step-son.
19 Father of daughter's husband.
20 Father of son's wife.
21 Father of husband's paternal grand-father.
22 Father of husband's paternal grand-mother.
23 Father of husband's maternal grand-father.
24 Father of husband's maternal grand-mother.
25 Husband's paternal grand-father.
26 Husband's maternal grand-father.
27 Husband's father or step-father.
28 Brother of husband's father.
29 Brother of husband's mother.
30 Husband's brother's son, or his direct lineal descendant.
31 Husband's sister's son, or his direct lineal descendant.
32 Brother's daughter's husband.
33 Sister's daughter's husband.

*Note.*—In the above table the words "Brother" and "Sister" denote brother and sister of the whole as well as half blood. Relationship by step means relationship by marriage.

priest; and unless, in the case of any Pársí who shall not have completed the age of twenty-one years, the consent of his or her father or guardian shall have been previously given to such marriage.

Remarriage save after divorce unlawful during lifetime of first wife or husband.

4. No Pársí shall, after the commencement of this Act, contract any marriage in the lifetime of his or her wife or husband, except after his or her lawful divorce from such wife or husband, by sentence of a Court as hereinafter provided:

and every marriage contracted contrary to the provisions of this section shall be void.

Punishment of bigamy.

5. Every Pársí who shall, after the commencement of this Act and during the lifetime of his or her wife or husband, contract any marriage without having been lawfully divorced from such wife or husband, shall be subject to the penalties provided in sections four hundred and ninety-four and four hundred and ninety-five of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife.

Certificate and registry of marriages.

6. Every marriage contracted after the commencement of this Act shall, immediately on the solemnization thereof, be certified by the officiating priest in the form contained in the schedule to this Act.

The certificate shall be signed by the said priest, the contracting parties, or their fathers or guardians when they shall not have completed the age of twenty-one years, and two witnesses present at the marriage; and the said priest shall thereupon send such certificate, together with a fee of two rupees to be paid by the husband, to the registrar of the place at which such marriage is solemnized.

The registrar on receipt of the certificate and fee shall enter the certificate in a register to be kept by him for that purpose, and shall be entitled to retain the fee.

Appointment of registrar.

7. For the purposes of this Act a registrar shall be appointed.

Within the local limits of the ordinary original civil jurisdiction of a High Court, the registrar shall be appointed by the Chief Justice of such Court, and, without such limits, by the Local Government.

Every registrar so appointed may be removed by the Chief Justice or Local Government appointing him.

Marriage-register to be open for public inspection.

8. The register of marriages mentioned in the sixth section shall. at all reasonable times, be open for inspection; and certified extracts therefrom shall, on application, be given by the registrar on payment to him by the applicant of two rupees for each such extract.

Every such register shall be evidence of the truth of the statements therein contained.

9. Any priest knowingly and wilfully solemnizing any marriage contrary to and in violation of the fourth section shall, on conviction thereof, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Penalty for solemnizing marriage contrary to section 4.

10. Any priest neglecting to comply with any of the requisitions affecting him contained in the sixth section shall, on conviction thereof, be punished for every such offence with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

Penalty for priest's neglect of requirements of section 6.

11. Every other person required by the sixth section to subscribe or attest the said certificate who shall wilfully omit or neglect so to do, shall, on conviction thereof, be punished for every such offence with a fine not exceeding one hundred rupees.

Penalty for omitting to subscribe and attest certificate.

12. Every person making or signing or attesting any such certificate containing a statement which is false, and which he either knows or believes to be false, or does not know to be true, shall be deemed to be guilty of the offence of forgery as defined in the Indian Penal Code, and shall be liable, on conviction thereof, to the penalties provided in section four hundred and sixty-six of the said Code.

Penalty for making, &c., false certificate.

13. Any registrar failing to enter the said certificate pursuant to the sixth section shall be punished with simple imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Penalty for not registering certificate.

14. Any person secreting, destroying or dishonestly or fraudulently altering the said register in any part thereof, shall be punished with imprisonment of either description as defined in the Indian Penal Code for a term which may extend to two years, or, if he be a registrar, for a term which may extend to five years, and shall also be liable to fine which may extend to five hundred rupees.

Penalty for secreting, destroying or altering register.

## III. *Of Pársí Matrimonial Courts.*

15. For the purposes of hearing suits under this Act, a special Court shall be constituted in each of the presidency-towns of Calcutta, Madras and Bombay, and in such other places in the territories of the several Local Governments as such Governments respectively shall think fit.

Constitution of special Courts under Act.

16. The Court so constituted in each of the presidency-towns shall be entitled the Pársí Chief Matrimonial Court of Calcutta, Madras or Bombay, as the case may be.

Pársí Chief Matrimonial Courts.

The local limits of the jurisdiction of a Pársí Chief Matrimonial Court shall be conterminous with the local limits of the ordinary original civil jurisdiction of the High Court.

The Chief Justice of the High Court, or such other Judge of the same Court as the Chief Justice shall from time to time appoint, shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided by eleven delegates.

Pársí District Matrimonial Courts.

**17.** Every Court so constituted at a place other than a presidency-town shall be entitled the Pársí District Matrimonial Court of such place.

Subject to the provisions contained in the next following section, the local limits of the jurisdiction of such Court shall be conterminous with the limits of the district in which it is held.

The Judge of the principal Court of original civil jurisdiction at such place shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided by seven delegates.

Power to alter territorial jurisdiction of district Courts.

**18.** The Local Government may from time to time alter the local limits of the jurisdiction of any Pársí District Matrimonial Court and may include within such limits any number of districts under its government.

Certain districts within jurisdiction of Chief Matrimonial Court.

**19.** Any district which the Local Government, on account of the fewness of the Pársí inhabitants, shall deem it inexpedient to include within the jurisdiction of any District Matrimonial Court, shall be included within the jurisdiction of the Pársí Chief Matrimonial Court for the territories under such Local Government where there is such Court.

Court seal.

**20.** A seal shall be made for every Court constituted under this Act, and all decrees and orders and copies of decrees and orders of such Court shall be sealed with such seal, which shall be kept in the custody of the presiding Judge.

Appointment of delegates.

**21.** The Local Governments shall, in the presidency-towns and districts subject to their respective governments, respectively appoint persons to be delegates to aid in the adjudication of cases arising under this Act.

The persons so appointed shall be Pársís: their names shall be published in the official Gazette; and their number shall, within the local limits of the ordinary original civil jurisdiction of a High Court, be not more than thirty, and in districts beyond such limits not more than twenty.

Power to appoint new delegates.

**22.** The appointment of a delegate shall be for life.

But whenever a delegate shall die, or be desirous of relinquishing his office, or refuse or become incapable or unfit to act, or be convicted of an offence under the Indian Penal Code or other law for the time being in force, then and so often the Local Government may appoint any other person being

a Pársí to be a delegate in his stead; and the name of the person so appointed shall be published in the official Gazette.

**23.** All delegates appointed under this Act shall be considered to be public servants within the meaning of the Indian Penal Code.

Delegates deemed public servants.

**24.** The delegates selected under the sixteenth and seventeenth sections to aid in the adjudication of suits under this Act, shall be taken under the orders of the presiding Judge of the Court in due rotation from the delegates appointed by the Local Government under the twenty-first section.

Selection of delegates under sections 16 and 17 from those appointed under section 21.

**25.** All advocates, vakíls and attorneys-at-law entitled to practise in a High Court shall be entitled to practise in any of the Courts constituted under this Act; and all vakíls entitled to practise in a district Court shall be entitled to practise in any district matrimonial Court constituted under this Act.

Practitioners in matrimonial Courts.

**26.** All suits instituted under this Act shall be brought in the Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit.

Court in which suits to be brought.

When the defendant shall at such time have left British India, such suit shall be brought in the Court at the place where the plaintiff and defendant last resided together.

When defendant has left British India.

## IV.—*Of Matrimonial Suits.*

### *(a). For a Decree of Nullity.*

**27.** If a Pársí at the time of his or her marriage was a lunatic or of habitually unsound mind, such marriage may, at the instance of his or her wife or husband, be declared null and void upon proof that the lunacy or habitual unsoundness of mind existed at the time of the marriage and still continues.

In case of lunacy or mental unsoundness.

Provided that no suit shall be brought under this section if the plaintiff shall at the time of the marriage have known that the respondent was a lunatic or of habitually unsound mind.

**28.** In any case in which consummation of the marriage is from natural causes impossible, such marriage may, at the instance of either party thereto, be declared to be null and void.

In case of impotency.

### *(b). For a Decree of Dissolution in Case of Absence.*

**29.** If a husband or wife shall have been continually absent from his or her wife or husband for the space of seven years, and shall not have been heard of as being alive within that time by those persons who would naturally have heard of him or her had he or she been alive, the marriage of such husband or wife may, at the instance of either party thereto, be dissolved.

In case of absence for seven years.

*(c). For Divorce or Judicial Separation.*

On ground of wife's adultery.

**30.** Any husband may sue that his marriage may be dissolved, and a divorce granted, on the ground that his wife has, since the celebration thereof, been guilty of adultery;

On ground of husband's adultery, &c.

and any wife may sue that her marriage may be dissolved and a divorce granted, on the ground that, since the celebration thereof, her husband has been guilty of adultery with a married or fornication with an unmarried woman not being a prostitute, or of bigamy coupled with adultery, or of adultery coupled with cruelty, or of adultery coupled with wilful desertion for two years or upwards, or of rape, or of an unnatural offence.

In every such suit for divorce on the ground of adultery the plaintiff shall, unless the Court shall otherwise order, make the person with whom the adultery is alleged to have been committed a co-defendant, and in any such suit by the husband the Court may order the adulterer to pay the whole or any part of the costs of the proceedings.

Grounds of judicial separation.

**31.** If a husband treat his wife with such cruelty or personal violence as to render it in the judgment of the Court improper to compel her to live with him, or if his conduct afford her reasonable grounds for apprehending danger to life or serious personal injury, or if a prostitute be openly brought into or allowed to remain in the place of abode of a wife by her own husband, she shall be entitled to demand a judicial separation.

Suits for divorce or judicial separation.

**32.** In a suit for divorce or judicial separation under this Act, if the Court be satisfied of the truth of the allegations contained in the plaint, and

that the offence therein set forth has not been condoned, and

that the husband and wife are not colluding together, and

that the plaintiff has not connived at or been accessory to the said offence, and

that there has been no unnecessary or improper delay in instituting the suit, and

that there is no other legal ground why relief should not be granted,

then and in such case, but not otherwise, the Court shall decree a divorce or judicial separation accordingly.

Alimony *pendente lite.*

**33.** In any suit under this Act for divorce or judicial separation, if the wife shall not have an independent income sufficient for her support and the necessary expenses of the suit, the Court, on the application of the wife, may order the husband to pay her monthly or weekly during the suit such sum, not exceeding one-fifth of the husband's net income, as the Court, considering the circumstances of the parties, shall think reasonable.

Permanent alimony.

**34.** The Court may, if it shall think fit, on any decree for divorce or judicial separation, order that the husband shall, to the satisfaction of the Court, secure

to the wife such gross sum, or such monthly or periodical payments of money for a term not exceeding her life, as, having regard to her own property (if any), her husband's ability and the conduct of the parties, shall be deemed just, and for that purpose may require a proper instrument to be executed by all necessary parties and suspend the pronouncing of its decree until such instrument shall have been duly executed.

In case any such order shall not be obeyed by her husband, he shall be liable to damages at her suit, and further to be sued by any person supplying her with necessaries, during the time of such disobedience, for the price or value of such necessaries.

Payment of alimony to wife or her trustee.

**35.** In all cases in which the Court shall make any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court may seem expedient, and may from time to time appoint a new trustee, if for any reason it shall appear to the Court expedient so to do.

### *(d). For Restitution of Conjugal Rights.*

Suit for restitution of conjugal rights.

**36.** Where a husband shall have deserted or without lawful cause ceased to cohabit with his wife, or where a wife shall have deserted or without lawful cause ceased to cohabit with her husband, the party so deserted or with whom cohabitation shall have so ceased, may sue for the restitution of his or her conjugal rights, and the Court, if satisfied of the truth of the allegations contained in the plaint and that there is no just ground why relief should not be granted, may proceed to decree such restitution of conjugal rights accordingly.

If such decree shall not be obeyed by the party against whom it is passed, he or she shall be liable to be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.[a]

No suit to enforce marriage or contract arising out of marriage when husband under 16, or wife under 14 years.

**37.** Notwithstanding anything hereinbefore contained, no suit shall be brought in any Court to enforce any marriage between Pársís or any contract connected with or arising out of any such marriage, if, at the date of the institution of the suit, the husband shall not have completed the age of sixteen years, or the wife shall not have completed the age of fourteen years.

Suits with closed doors.

**38.** In every suit preferred under this Act, the case shall be tried with closed doors should such be the wish of either of the parties.

**39.** [*Repealed by Act No. VII of* 1870.]

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[a] See 9 Bomb. 290.

Civil Procedure Code applied.

40. The provisions of the Code of Civil Procedure shall, so far as the same may be applicable, apply to suits instituted under this Act.[a]

Determination of questions of law, procedure and fact.

41. In suits under this Act all questions of law and procedure shall be determined by the presiding Judge; but the decision on the facts shall be the decision of the majority of the delegates before whom the case is tried.

Appeal to High Court.

42. An appeal shall lie to the High Court from the decision of any Court established under this Act, whether a Chief Matrimonial Court or a District Matrimonial Court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground:

Provided that such appeal be instituted within three calendar months after the decision appealed from shall have been pronounced.

Liberty to parties to marry again.

43. When the time hereby limited for appealing against any decree dissolving a marriage shall have expired and no appeal shall have been presented against such decree, or

when any such appeal shall have been dismissed, or

when in the result of any appeal any marriage shall be declared to be dissolved, but not sooner,

it shall be lawful for the respective parties thereto to marry again, as if the prior marriage had been dissolved by death.

## V.—*Of the Children of the Parties.*

Custody of children *pendente lite.*

44. In any suit under this Act for obtaining a judicial separation or a decree of nullity of marriage, or for dissolving a marriage, the Court may from time to time pass such interim orders and make such provision in the final decree as it may deem just and proper, with respect to the custody, maintenance and education of the children under the age of sixteen years, the marriage of whose parents is the subject of such suit,

Orders as to custody of children after final decree.

and may, after the final decree, upon application by petition for this purpose, make from time to time all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such final decree, or by interim orders in case the suit for obtaining such decree were still pending.

Settlement of wife's property for benefit of children.

45. In any case in which the Court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property either in possession or reversion, the Court may order such settlement as it shall think reasonable to be made of

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See 9 Bomb. 290.

such property or any part thereof, for the benefit of the children of the marriage or any of them.

VI.—*Of the Mode of enforcing Penalties under this Act.*

**46.** All offences under this Act may be tried by any officer exercising the powers of a Magistrate, unless the period of imprisonment to which the offender is liable shall exceed that which such officer is competent to award under the law for the time being in force in the place in which he is employed. Cognizance of offences under Act.

When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial before the Court of Session.

**47.** If any offence which by this Act is declared to be punishable with fine, or with fine and imprisonment not exceeding six months, shall be committed by any person within the local limits of the ordinary original civil jurisdiction of the High Court, such offence shall be punishable upon summary conviction by any Magistrate of Police of the place at which such Court is held. Punishment of offences under Act, committed within local limits of High Court.

**48.** All fines imposed under the authority of this Act may, in case of non-payment thereof, be levied by distress and sale of the offender's movable property by warrant under the hand of the officer imposing the fine. Levy of fines by distress.

**49.** In case any such fine shall not be forthwith paid, such officer may order the offender to be arrested and kept in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress. Procedure until return made to distress-warrant.

**50.** If upon the return of the warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or Imprisonment if no sufficient distress.

in case it shall appear to the satisfaction of such officer, by the confession of the offender or otherwise, that he has not sufficient movable property whereupon such fine could be levied if a warrant of distress were issued,

any such officer may, by warrant under his hand, commit the offender to prison, for any term not exceeding two calendar months when the amount of fine shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount of fine.

VII.—*Miscellaneous.*

**51.** Subject to the provisions contained or referred to in this Act, the High Court shall make such rules and regulations concerning the practice and Rules of procedure of Pársí Matri-

monial Courts to be made by High Court.

procedure of the Pársí Chief and District Matrimonial Courts in the presidency or Government in which such High Court shall be established, as it may from time to time consider expedient, and shall have full power from time to time to revoke or alter the same.

All such rules, revocations and alterations shall be published in the official Gazette.

Power to invest chief executive officer with powers of Local Government

52. The Governor General of India in Council may invest the chief executive officer of any part of British India under the immediate administration of the Government of India with the powers vested by this Act in a Local Government.

Extent.

53. This Act shall extend to the whole of British India.

SCHEDULE (*see section* 6.)

| Date and place of marriage. | Names of the husband and wife. | Condition at the time of marriage. | Rank or profession. | Age. | Residence. | Names of the fathers or guardians. | Rank or profession. | Signature of the officiating priest. | Signatures of the witnesses. | Signature of father or guardian when husband or wife is an infant. |
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## ACT No. XX OF 1865.[a]

*Received the Governor General's assent on the* 10*th April* 1865.

## An Act to amend the law relating to Pleaders and Mukhtárs.

Preamble.

WHEREAS it is expedient to amend the law relating to pleaders and mukhtárs, and to provide rules for the qualification, admission, enrolment, suspension and dismissal of revenue-agents; It is enacted as follows:—

*Preliminary.*

Short title.

1. This Act may be cited as "The Pleaders, Mukhtárs and Revenue Agents' Act, 1865."

[a] Amended by Act No. XXIX of 1865. Extended to the Sadr Court, North-Western Provinces, by Act No. IX of 1866.

2. In this Act, unless there be something repugnant or inconsistent in the subject or context— Interpretation of terms.

Words importing the singular number include the plural, and words importing the plural number include the singular: Number.

"Section" means a section of this Act: "Section."

"Person" includes any company or association or body of persons, whether incorporated or not: "Person."

"Pleader" includes vakíls: "Pleader."

"Collector" includes officers performing any of the duties of a collector of land-revenue: "Collector."

"Magistrate" includes officers exercising any of the powers of a Magistrate: "Magistrate."

"Judge" means the presiding judicial officer in every civil and sessions Court by whatever title he is designated: "Judge."

"Court" means all Courts subordinate to the High Court, including Courts of Small Causes:[a] "Court."

"District" means the local jurisdiction of the principal civil Court of original jurisdiction; and "District."

"District Court" means such Court, and includes Sessions Courts, and, for the purposes of this Act, the Courts of a Commissioner and Deputy Commissioner or any other Court in the territories known as non-regulation, exercising like powers as those of a Commissioner and Deputy Commissioner or of a Civil and Sessions Judge: "District Court."

And in any part of British India in which this Act operates, "Local Government" denotes the person authorized to administer the executive government in such part: "Local Government."

"High Court" denotes the highest civil Court of appeal, and "High Court."

"Board of Revenue" denotes the chief revenue-authority therein. "Board of Revenue."

3. [*Repealed by Act No. XIV of* 1870].

*Of Pleaders and Mukhtárs.*

4. The High Court is hereby authorized and required, within six months after this Act shall take effect in the territories in which such Court exercises jurisdiction, to make rules for the qualification, admission and enrolment of proper persons to be pleaders and mukhtárs of the Courts in such territories,[b] for the fees to be paid for the examination, admission and enrolment of such persons, and, subject to the provisions hereinafter contained, for the suspension and dismissal of the pleaders and mukhtárs so admitted and enrolled. High Court to make rules for qualification, &c., of pleaders and mukhtárs.

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[a] In the Mofussil, 1 Beng. A. C. 49.

[b] See *Calcutta Gazette*, 16th September 1874, p. 1479. *Oudh Government Gazette*, 30th October 1874, p. 322.

The High Court may also from time to time vary and add to such rules.

No person to practise as pleader or mukhtár unless qualified under Act.

5. Except as hereinafter provided, no person shall appear, plead or act as a pleader, or appear or act as a mukhtár, in any Court to which this Act extends, unless he shall have been admitted and enrolled and shall be otherwise duly qualified to practise as a pleader or as a mukhtár, as the case may be, pursuant to the provisions of this Act, and unless he shall continue to be so qualified and enrolled at the time of his practising as a pleader or mukhtár as aforesaid:

Saving of pleaders already qualified.

Provided that every person who at the time at which this Act shall come into operation in any part of British India shall be, or shall be qualified to act as, a pleader in any Court in such part, by virtue of any law, rule or order in force therein, shall be entitled to be admitted and enrolled as a pleader in the High Court pursuant to the provisions of this Act, without passing any examination, but subject to the conditions of any certificate or diploma held by him as to the class of Courts in which such certificate or diploma authorizes him to practise.

Local Government to appoint examiners.

6. To facilitate the ascertainment of the qualifications mentioned in the fourth section, the Local Government shall from time to time appoint persons to be examiners for the purposes aforesaid, and make regulations for conducting such examinations.[a]

Names of pleaders and mukhtárs to be enrolled.

7. The High Court shall cause the name of every person who shall be admitted a pleader or a mukhtár pursuant to the provisions of this Act, to be enrolled in books to be provided and kept for that purpose in such Court.

The Courts shall take judicial notice whether a pleader or mukhtár is enrolled or not.

Certificates to be issued to pleaders and mukhtárs.

8. The High Court shall cause certificates, signed by such officer as the Court shall appoint, to be issued to persons who have been admitted and enrolled under the provisions of this Act as pleaders or mukhtárs and are entitled to practise as such.

Any such certificate, when renewed as provided in the ninth section, may be issued and signed by the officer so appointed or by the Judge of the district Court within the limits of whose jurisdiction the holder of the certificate shall then ordinarily practise.

Every Judge so renewing a certificate shall notify such renewal to the High Court.

Form and duration of certificate.

9. Every certificate, whether original or renewed, shall be engrossed upon stamp-paper to be supplied by the person entitled to the certificate, and shall

[a] *Oudh Government Gazette*, 31st October 1874, p. 320.

be in the form contained in the second schedule to this Act, and shall authorize the holder to practise for the period of one year from the date of the certificate.

At the expiration of such time, the holder of the certificate, if desirous to continue to practise, shall be entitled to have his certificate renewed, and on every such renewal the certificate then in the holder's possession shall be cancelled and retained by the officer or Judge signing the renewed certificate.

**10.** The stamp on the certificate, whether original or renewed, shall be of the following value:— Value of stamp on certificate.

On a certificate authorizing the holder to practise as a pleader—

(*a.*) in the High Court and any subordinate Court—rupees fifty:

(*b.*) in the district Courts, subordinate Courts and Small Cause Courts—rupees twenty-five:

(*c.*) in the Sadr Amíns' and Munsifs' Courts and in the Courts of Assistant Commissioners, Extra Assistant Commissioners and Tahsíldárs—rupees fifteen:

(*d.*) in the Munsifs' Courts or any Court of first instance not hereinbefore mentioned—rupees five.

On a certificate authorizing the holder to practise as a mukhtár—

(*e.*) in the High Court and any subordinate Court—rupees twenty-five:

(*f.*) in the district Courts, subordinate Courts and Small Cause Courts—rupees sixteen:

(*g.*) in the Courts of the Commissioners of Circuit, Magistrates and subordinate Magistrates: in Sadr Amíns' and Munsifs' Courts, and in the Courts of Assistant Commissioners, Extra Assistant Commissioners and Tahsíldárs—rupees eight:

(*h.*) in the Munsifs' Courts or any Court of first instance not hereinbefore mentioned—rupees four.

**11.** Pleaders duly admitted and enrolled under this Act may appear, plead and act in any criminal Court, or before any Board of Revenue or in any revenue-office within the limits of the general jurisdiction of the High Court in which they are enrolled. Pleaders may practise in criminal Courts and revenue-offices.

Mukhtárs duly admitted and enrolled as aforesaid may, subject to the conditions of their certificates as to the class of Courts in which they are authorized to practise, appear and act in any civil Court, and may appear, plead and act in any criminal Court within the same limits. Mukhtárs may plead in criminal Courts.

**12.** Every person who shall have been admitted to practise as a pleader or mukhtár under the provisions hereinbefore contained may, subject to the con- Persons admitted in one Court, admis-

sible to practise in other Courts of same or subordinate jurisdiction.

ditions of his certificate as to the class of Courts in which he is authorized to practise, apply to be enrolled in the Court in which he shall desire ordinarily to practise; and on such application he shall be enrolled in a book to be kept for that purpose in such Court.

Provided that neither this section nor the last preceding section shall apply to any Court established by Royal Charter.

Uncertificated persons practising as pleaders or mukhtárs liable to fine or imprisonment

13. Except as hereinafter provided, any person who shall practise as a pleader or mukhtár in any civil or criminal Court or revenue-office to which this Act extends, without having previously obtained a properly stamped certificate authorizing him so to practise, which certificate shall be then in force, shall be liable by order of such Court or the officer at the head of such office to a fine not exceeding ten times the amount of the stamp required by this Act to be impressed on the certificate which he should then have held, and, in default of payment, to imprisonment in the civil jail for a period not exceeding six calendar months.

and incapable of recovering fees.

He shall also be incapable of maintaining any suit for any fee or reward for or in respect of anything done or any disbursement made by him as such pleader or mukhtár whilst he shall have been without such certificate.

Suspension or dismissal for criminal offence.

14. The High Court may suspend or dismiss any pleader or mukhtár enrolled under this Act in such Court, who shall be convicted of any criminal offence.

And for unprofessional conduct.

15. The High Court may also, after such enquiry as it may deem proper, suspend or dismiss any pleader or mukhtár enrolled as aforesaid, who shall be guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause.[a]

Procedure when charge of unprofessional conduct brought in subordinate Court.

16. If any pleader or mukhtár practising in any Court subordinate to the High Court shall be charged in such subordinate Court with any such conduct as aforesaid, the Judge or Magistrate of the Court, as the case may be, shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the pleader or mukhtár at least ten days before the day so appointed; and on such day or on any subsequent day to which the enquiry may be adjourned, the Court shall receive all evidence properly tendered by or on behalf of the party bringing the charge or by the pleader or mukhtár, and shall proceed to adjudicate on the charge.

If the Judge or Magistrate shall find the charge established, and consider that the pleader or mukhtár should be suspended or dismissed in consequence,

[a] 7 Beng. 179.

he shall record his finding and the grounds thereof, and shall report the same to the High Court, and the High Court shall proceed to acquit, suspend or dismiss the pleader or mukhtár.

Such report, when made by any officer other than the District Judge, shall be submitted to the High Court through the District Judge, who shall accompany the report with any remarks that he may think necessary and an expression of his own opinion on the case.

Such report, when made by a Magistrate subordinate to the Magistrate of the District, shall be submitted through the Magistrate of the District to the District Judge, and shall be accompanied by the remarks and opinion of the Magistrate of the District as aforesaid.

Suspension pending investigation.

The Judge or Magistrate may, pending the investigation and the orders of the High Court, suspend the pleader or mukhtár from practising as such in his Court.

High Court may call for record in case of acquittal under section 16.

**17.** The High Court, in any case in which a pleader or mukhtár shall have been acquitted under the last preceding section otherwise than by an order of the High Court, may call for the record and pass such order thereon as shall seem fit.

Dismissed pleader or mukhtár to surrender his certificate.

**18.** When any pleader or mukhtár shall be suspended or dismissed under any of the foregoing sections, he shall forthwith deliver up his certificate to the Court in which he was practising at the time he was so suspended or dismissed, or to any Court to which he shall be ordered by the High Court to deliver the same.

Penalty for non-delivery.

If he fail to make such delivery, he shall be liable, by order of such Court, to a fine not exceeding two hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term not exceeding three calendar months.

And for illegally practising.

If during such suspension or after such dismissal he shall practise as a pleader or mukhtár in any Court, he shall be liable, by order of such Court, to a fine not exceeding five hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term not exceeding six calendar months.

### *Of Agents practising in the Revenue Offices.*

No person to act as agent in revenue-offices or Magistrates' Courts, unless qualified as herein provided.

**19.** No person other than a pleader duly qualified under the provisions hereinbefore contained, or other than persons authorized by such general or special powers-of-attorney as are hereinafter mentioned, shall practise as an agent in any proceeding before the Board of Revenue or in any office subordinate to such Board, unless he shall have obtained a certificate from such Board in the manner hereinafter provided.

Any such certificate, when renewed as provided in the twenty-first section, may be issued and signed by the secretary of the Board or by any other officer authorized by the Board in that behalf, or by the Collector of the district within the limits of whose jurisdiction the holder of the certificate shall practise at the time of renewal.

Names of revenue-agents to be enrolled.

**20.** The Board of Revenue shall cause the name of every person (hereinafter called a revenue-agent) who shall have obtained such certificate to be enrolled in a book to be provided and kept for that purpose by the secretary of the Board or other officer authorized by the Board in that behalf.

Form of certificate.

**21.** Every such certificate, whether original or renewed, shall be engrossed upon stamp-paper to be supplied by the person entitled to the certificate, and shall be in the form contained in the third schedule to this Act, and shall authorize the holder to practise for the period of one year from the date of the certificate.

Renewal.

At the expiration of such time, the holder of the certificate, if desirous to continue to practise, shall renew his certificate, and on every such renewal the certificate then in his possession shall be cancelled and retained by the officer or collector signing the renewed certificate.

Value of stamp.

Every collector so renewing a certificate shall notify such renewal to the Board of Revenue.

**22.** The stamp on such certificate, whether original or renewed, shall be of the following value:—

On a certificate authorizing the holder to practise as a revenue agent—

in the Board of Revenue or in any office subordinate to the Board—rupees fifteen:

in the office of a Commissioner or in any office subordinate to a Commissioner—rupees ten:

in the office of a Collector or in any office subordinate to a Collector—rupees five.

Revenue Board to ascertain qualifications of revenue-agents.

**23.** The Board of Revenue shall, before they shall grant any such certificate, satisfy themselves of the qualifications and fitness of the person applying for the same;

And to make rules for defining qualifications.

and they are hereby authorized and required, within six months after the commencement of this Act in the part of British India in which such Board is situate, to prepare rules for the purpose of defining what qualifications shall be required for such certificate.

Local Government to ap-

**24.** To facilitate the ascertainment of the qualifications mentioned in the last preceding section, the Local Government shall from time to time appoint

persons to be examiners for the purposes aforesaid, and make regulations for conducting the examinations.

point examiners.

25. Every person who shall have been admitted to practise as a revenue-agent under this Act, may, subject to the conditions thereof as to the class of offices in which he is authorized to practise, apply to be enrolled in the office in which he shall desire ordinarily to practise, and on such application he shall be enrolled in a book to be kept for that purpose in such office.

Enrolment of revenue-agent in office in which he shall usually practise.

Any such revenue-agent shall also be entitled, on production of the certificate held by him and subject to the conditions as aforesaid, to practise as a revenue-agent in all other revenue-offices within the limits of the territory under the Board of Revenue in which he is enrolled.

26. The Board of Revenue may suspend or dismiss any revenue-agent practising in any revenue-office, who shall be convicted of any criminal offence.

Suspension or dismissal for criminal offence.

27. The Board of Revenue may also, after making such enquiry as it may think proper, suspend or dismiss any revenue-agent practising before such Board, who may be guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause.

And for unprofessional conduct.

28. If any pleader shall, while practising before such Board, be charged with fraudulent or grossly improper conduct in the discharge of his duty in such practice, the Board shall enquire into the charge and report the result to the High Court,

Procedure when pleader charged with unprofessional conduct before Board.

and the High Court, after making such further enquiry as it shall think fit, shall proceed to acquit, suspend or dismiss the pleader, and shall thereupon send notice of such acquittal, suspension or dismissal to the said Board.

Pending the investigation and the receipt of the notice last aforesaid, the Board may suspend the pleader from practising before it.

29. If any pleader or revenue-agent shall be charged with any such conduct in any office subordinate to the Board of Revenue, the officer at the head of such office shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Procedure when pleader or revenue-agent so charged in office subordinate to Board.

Such copy and notice shall be served upon the person charged at least ten days before the day so appointed; and on such day or on any other day to which the enquiry may be adjourned, the officer shall receive all evidence properly tendered by or on behalf of the person bringing the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer find the charge established, and consider that the person charged should be suspended or dismissed in consequence, he shall record his

finding and the grounds thereof, and report the same to the Board of Revenue, and the Board shall, if the person charged be a revenue-agent, proceed to acquit, suspend or dismiss him, and shall, if he be a pleader, forward such report to the High Court in which he is enrolled.

The High Court, after making any further enquiry which it shall think necessary, shall proceed to acquit, suspend or dismiss the pleader so charged, and shall thereupon send notice of such acquittal, suspension or dismissal to the Board by whom such report was forwarded.

If the officer shall be subordinate to the Commissioner of a Division, he shall forward the report through such Commissioner, who shall accompany the same with any remarks that he may think necessary and an expression of his own opinion on the case.

Power to Board to call for record.

**30.** The Board of Revenue, in any case in which a pleader or revenue-agent shall have been acquitted under the last preceding section otherwise than by an order of the High Court or Board, may call for the record and pass such order thereon as shall seem fit, subject, in the case of a pleader, to the provisions of the twenty-eighth section.

Report to High Court when dismissed revenue-agent is also enrolled mukhtár.

**31.** Whenever a revenue-agent who has been dismissed or suspended by order of the Board of Revenue shall also be a mukhtár enrolled under the provisions of this Act, the Board of Revenue shall forward a report of the case to the High Court in which he shall be enrolled; and such Court, after making any enquiry which it may think necessary, may suspend or dismiss him as such mukhtár.

Section 18 applied.

**32.** The provisions of the eighteenth section shall apply to any pleader or mukhtár suspended or dismissed under the twenty-eighth, twenty-ninth or thirty-first section.

Dismissed revenue-agent to surrender certificate.

**33.** When a revenue-agent shall be suspended or dismissed under any of the foregoing sections, he shall forthwith deliver up his certificate to the Board of Revenue or the officer at the head of the office in which he was practising at the time he was so suspended or dismissed, or to any other officer whom the Board may order to receive the same.

Penalty for non-delivery.

If he fail to make such delivery, he shall be liable by order of the Board or such officer as aforesaid to a fine not exceeding two hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term not exceeding three calendar months.

Penalty on unqualified person practising as agent.

**34.** Every person who shall practise as a revenue-agent in any revenue-office in the territories to which this Act extends, without holding a certificate then in force and without being duly qualified to practise as herein provided, shall be liable by order of the Board or officer in whose office he shall so

practise[a] to a fine not exceeding rupees two hundred, and, in default of payment to imprisonment in the civil jail for a period which may extend to three calendar months.

The person so fined as aforesaid shall be incapable of maintaining any suit for any fee or reward for or in respect of anything done or any disbursement made by him in the course of such practising.

**35.** Nothing hereinbefore contained shall prevent any person from employing any other person, though not a revenue-agent enrolled under the provisions of this Act, to commence and prosecute all business or any particular business in which the employer may be concerned in any revenue-office; **Persons authorized by general or special powers-of-attorney may be agents.**

Provided that the person so commencing and prosecuting all or any such business as aforesaid shall hold a general or a special power-of-attorney, as the case may be, in that behalf, from the person so employing him:

Provided also that no person shall act as last aforesaid, unless he shall have received the general or the special sanction, as the case may be, in that behalf, of the Board of Revenue or other officer authorized by the Local Government to grant such sanction. **Sanction required.**

**36.** Such general or special sanction, as the case may be, may at any time be revoked or suspended by the Board of Revenue or other officer as aforesaid by whom it was granted; **Sanction may be revoked or suspended.**

and any person who, having received such sanction, shall practise under the nineteenth section during the continuance of such revocation or suspension, shall be liable to the penalties and incur the disabilities mentioned in the thirty-third[b] section. **Penalty for practising during suspension.**

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*Of the Remuneration of Pleaders and Revenue Agents.*

**37.** The High Court shall from time to time fix and regulate the fees which shall be payable upon all proceedings in the Courts by any party in respect of the fees of his adversary's pleader; **High Court and Revenue Board to fix fees on civil and revenue-proceedings.**

and the Board of Revenue shall from time to time fix and regulate the fees which shall be payable upon all proceedings in the revenue Courts and offices by any party in respect of the fees of his adversary's pleader or revenue-agent.

Tables of the fees so fixed shall be published in the official Gazette. **Publication of tables.**

**38.** The provisions of the last preceding section shall not be applicable to agents appointed under the thirty-fifth section. **Application of section 37.**

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[a] 5 Beng., Appendix, 89.

[b] *Sic.* Read 'thirty-fourth.'

Clients may make private agreements with pleaders, mukhtárs or revenue-agents, as to remuneration.

39. Parties employing pleaders, mukhtárs or revenue-agents in any Court or office, shall be at liberty to settle with them by private agreement the remuneration to be paid for their professional services, and it shall not be necessary to specify such agreement in the power under which such pleaders, mukhtárs or revenue-agents for the time being act.

Enforcement.

Such agreements shall not be enforced otherwise than by regular suit.

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*Miscellaneous.*

Suitors may appear, &c., for co-suitors.

40. Any suitor may appear, plead and act in any suit, appeal or other proceeding on behalf of any co-suitor.

Prosecutors or prisoners may employ assistant.

And in all criminal Courts, any person defending a case may (with the permission of the presiding Judge or Magistrate) employ any other person, though not a pleader or mukhtár duly qualified under the provisions of this Act, to assist him in such defence.

Fees not recoverable by such persons.

But no suitor nor person so appearing, pleading, acting or assisting, shall be entitled to recover any fee or reward therefor.

Rules to be published in Gazette.

41. The rules mentioned in the fourth and twenty-third sections, and all variations of and additions to such rules, shall be published in three consecutive numbers of the official Gazette.

Approval of rules.

Rules made under this Act by a High Court not established by Royal Charter shall, before such publication, be submitted to and approved by the Local Government.

Fines subject to revision.

42. Every order for imposing a fine which shall be passed under this Act, shall be subject to revision by the High Court if the order shall have been passed by a Court subordinate to the High Court, or by the Board of Revenue if the order shall have been passed by an officer subordinate to such Board.

Application for enrolment by persons acting as pleaders.

43. Any person who, at the time that this Act shall come into operation in any part of British India, shall be practising as a pleader in any Court in such part, and who shall wish to be enrolled as a pleader under this Act, may apply to be so enrolled to the Court in which he is practising.

Submission to High Court.

Such Court, if subordinate to the High Court, shall forward the application to the High Court.

Enrolment and grant of certificate.

The High Court shall cause the applicant to be enrolled under the provisions of this Act, and, if he be practising in a subordinate Court, shall authorize the District Judge to grant a certificate to the applicant as provided in the eighth, ninth and tenth sections.

Application through District Judge.

Applications for enrolment under this section, when made by any pleader practising in a Court subordinate to the District Court, shall be forwarded to the High Court through the District Judge.

**44.** With the exception of section thirty-nine, this Act shall not apply to advocates, vakíls and attorneys-at-law, admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted, nor to mukhtárs practising in such Court:

Act not to apply to advocates, &c., enrolled by High Court under Letters Patent.

Provided that the High Court shall have power to make rules for the qualification, admission, enrolment, suspension and dismissal of the mukhtárs practising on the appellate side of such Court and to prescribe penalties for persons practising contrary to such rules or any of them, and from time to time to vary such rules and penalties.

Power to make and alter rules for qualification, &c.

Provided also that the Court may from time to time fix and regulate the fees which shall be payable on all proceedings on the appellate side of such Court by any party in respect of the fees of his adversary's vakíl.

And to regulate fees.

The rules, penalties and fees so made, prescribed and fixed, and every variation thereof, shall be published in three consecutive numbers of the official Gazette.

Publication of rules, &c.

**45.** Every person now or hereafter enrolled as an advocate or vakíl on the roll of any High Court under the Letters Patent constituting such Court shall, notwithstanding anything hereinbefore contained, be entitled as such to practise in any Court in British India other than a High Court on whose roll he is not enrolled, or in any such Court with the permission of the Court, and in any revenue-office, subject nevertheless to the rules in force relating to the language in which the Court or office is to be addressed by pleaders or revenue-agents.

Courts in which advocates and vakíls enrolled in High Court may practise, subject to rules as to language.

Provided that no such vakíl shall be entitled to practise under this section before a Judge of the High Court, Division Court or High Court exercising original jurisdiction.

Restriction as to vakíls.

**46.** Every person now or hereafter enrolled as an attorney on the roll of any High Court shall, notwithstanding anything hereinbefore contained, be entitled as such to practise in any Court of British India other than a High Court established by Royal Charter and in any revenue-office.

Attorney of High Court may practise in any Court not a Charter Court.

**47.** This Act shall take effect in the territories under the Governments of the Lieutenant Governors of Bengal and the North-Western Provinces, respectively, on the first day of January 1866, and may be extended by order of any other Local Government to the territories subject to such Government.[a]

Commencement of Act. Extension.

Every such order shall be published in the official Gazette.

Publication.

**48.** From the date on which this Act shall be extended by the Local Government under the provision contained in the last preceding section to the

Repeal of inconsistent enactments in

[a] It was extended to the Panjáb on 27th February, 1866, and to Oudh on 11th April, 1867. It has not been extended to any other part of British India.

Madras, Bombay, Panjáb, &c.

territories subject to such Government, so much of the Regulations in force therein as is in any way inconsistent with, or repugnant to, any of the provisions of this Act, shall cease to have effect in such territories,

Exception.

except as to the recovery and application of any penalty for any offence which shall have been incurred before such extension of the Act.

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## FIRST SCHEDULE.

[*Repealed by Act No. XIV of* 1870.]

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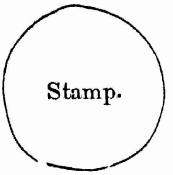
## SECOND SCHEDULE.

*Form of Pleader or Mukhtár's Certificate.*




Pursuant to "The Pleaders, Mukhtárs and Revenue Agents' Act, 1865," I hereby certify that *A. B.*
pleader [*or* mukhtár] whose place [*or* places] of business is [*or* are] at
hath this day delivered and left with me a declaration in writing signed by him, and containing his name and place [*or* places] of business and the Court [*or* Courts] of which he is admitted a pleader [*or* mukhtár], together with the year in which he was so admitted ; and I hereby further certify that he is duly enrolled in the High Court of Judicature at Fort William in Bengal [*or* the Sadr Court of the North-Western Provinces, *or as the case may be*], and that he is entitled to practise as a pleader [*or* mukhtár] in the District Courts, subordinate Courts, and Small Cause Courts [*or* the Sadr Court of the North-Western Provinces, and any subordinate Court, *or* the Sadr Amíns' Courts, *or* the Munsifs' Courts, *as the case may be*], and to practise as a revenue-agent before the Board of Revenue of the Lower Provinces [*or* of the North-Western Provinces [*or as the case may be*], for the period of one year from the date hereof. Given under my hand this day of

186 .

*C. D.*

Registrar [*or as the case may be*] of the High Court of Judicature at Fort William in Bengal [*or* of the Sadr Court of the North-Western Provinces, *or as the case may be.*]

THIRD SCHEDULE

*Form of Revenue Agent's Certificate.*

Stamp.

Pursuant to "The Pleaders, Mukhtárs and Revenue Agents' Act, 1865," I hereby certify that *A. B.* of is entitled to practise as a revenue-agent before the Board of Revenue of the North-Western Provinces [*or* of the Lower Provinces, *or as the case may be*], and in any office subordinate thereto in such provinces, for the period of one year from the date hereof. Given under my hand this day of 186 .

*C. D.*

Secretary to the Board of Revenue of the North-Western Provinces [*or* the Lower Provinces, *or as the case may be.*]

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ACT No. XXI OF 1865.

*Received the Governor General's assent on the* 10*th April* 1865.

## An Act to define and amend the Law relating to Intestate Succession among the Pársís.[a]

WHEREAS it is expedient to define and amend the law relating to intestate succession among the Pársís; It is enacted as follows:— Preamble.

1. Where a Pársí dies leaving a widow and children, the property of which he shall have died intestate shall be divided among the widow and children, so that the share of each son shall be double the share of the widow, and that her share shall be double the share of each daughter. Division of property among widow and children of intestate.

2. Where a female Pársí dies leaving a widower and children, the property of which she shall have died intestate shall be divided among the widower and such children, so that his share shall be double the share of each of the children. Division of property among widower and children of intestate.

3. When a Pársí dies leaving children but no widow, the property of which he shall have died intestate shall be divided amongst the children, so that the share of each son shall be four times the share of each daughter. Division of property amongst children of male intestate leaving no widow.

[a] Declared to apply to the whole of British India except the Scheduled Districts, Act No. XV of 1874.

Division amongst children of female intestate leaving no widower.

4. When a female Pársí dies leaving children but no widower, the property of which she shall have died intestate shall be divided amongst the children in equal shares.

Division of predeceased child's share among widow or widower and issue of such child.

5. If any child of a Pársí intestate shall have died in his or her lifetime, the widow or widower and issue of such child shall take the share which such child would have taken if living at the intestate's death in such manner as if such deceased child had died immediately after the intestate's death.

Division of property when intestate leaves widow or widower, but no lineal descendants.

6. Where a Pársí dies leaving a widow or widower, but without leaving any lineal descendants, his or her father and mother, if both are living, or one of them if the other is dead, shall take one moiety of the property as to which he or she shall have died intestate, and the widow or widower shall take the other moiety.

Where both the father and the mother of the intestate survive him or her, the father's share shall be double the share of the mother.

Where neither the father nor the mother of the intestate survives him or her, the intestate's relatives on the father's side, in the order specified in the first schedule hereto annexed, shall take the moiety which the father and the mother would have taken if they had survived the intestate.

The next-of-kin standing first in the same schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity.

If there be no relatives on the father's side, the intestate's widow or widower shall take the whole.

Division of property when intestate leaves neither widow nor widower nor lineal descendants.

7. When a Pársí dies leaving neither lineal descendants nor a widow or widower, his or her next-of-kin, in the order set forth in the second schedule hereto annexed, shall be entitled to succeed to the whole of the property as to which he or she shall have died intestate.

The next-of-kin standing first in the same schedule shall always be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity.

Exemption of Pársís from parts of Indian Succession Act, 1865.

8. The following portions of the Indian Succession Act, 1865, shall not apply to Pársís (that is to say) the whole of Part III, the whole of Part IV excepting section twenty-five, the whole of Part V, and section forty-three.

## THE FIRST SCHEDULE.

(1.) Brothers and sisters, and the children or lineal descendants of such of them as shall have predeceased the intestate.

(2.) Grandfather and grandmother.

(3.) Grandfather's sons and daughters, and the lineal descendants of such of them as shall have predeceased the intestate.

(4.) Great-grandfather and great-grandmother.

(5.) Great-grandfather's sons and daughters, and the lineal descendants of such of them as shall have predeceased the intestate.

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## THE SECOND SCHEDULE.

(1.) Father and mother.

(2.) Brothers and sisters and the lineal descendants of such of them as shall have predeceased the intestate.

(3.) Paternal grandfather and paternal grandmother.

(4.) Children of the paternal grandfather, and the lineal descendants of such of them as shall have predeceased the intestate.

(5.) Paternal grandfather's father and mother.

(6.) Paternal grandfather's father's children, and the lineal descendants of such of them as shall have predeceased the intestate.

(7.) Brothers and sisters by the mother's side, and the lineal descendants of such of them as shall have predeceased the intestate.

(8.) Maternal grandfather and maternal grandmother.

(9.) Children of the maternal grandfather, and the lineal descendants of such of them as shall have predeceased the intestate.

(10.) Son's widow, if she have not re-married at or before the death of the intestate.

(11.) Brother's widow, if she have not re-married at or before the death of the intestate.

(12.) Paternal grandfather's son's widow, if she have not re-married at or before the death of the intestate.

(13.) Maternal grandfather's son's widow, if she have not re-married at or before the death of the intestate.

(14.) Widowers of the intestate's deceased daughters, if they have not re-married at or before the death of the intestate.

(15.) Maternal grandfather's father and mother.

(16.) Children of the maternal grandfather's father, and the lineal descendants of such of them as shall have predeceased the intestate.

(17.) Paternal grandmother's father and mother.

(18.) Children of the paternal grandmother's father, and the lineal descendants of such of them as shall have predeceased the intestate.

## ACT No. XXIX OF 1865.

*Received the Governor General's assent on the 22nd December* 1865.

# An Act to amend the Pleaders, Mukhtárs and Revenue Agents' Act, 1865.

Preamble.

WHEREAS it is expedient to amend the Pleaders, Mukhtárs and Revenue Agents' Act, 1865 (Act No. XX of 1865); It is enacted as follows:—

Persons qualified as pleaders or mukhtárs when Act No. XX of 1865 comes into operation, may continue to practise for six months as if that Act had not passed.

1.[a] Notwithstanding anything contained in the Pleaders, Mukhtárs and Revenue Agents' Act, 1865, any person who at the time when such Act shall come into operation shall be duly qualified to practise as a pleader or mukhtár in any Court in any part of the territories in which the said Act shall take effect, shall and lawfully may continue to practise as a pleader or mukhtár, as the case may be, in such Court for the period of six calendar months from the time when the said Act shall come into operation in that part of India, without being admitted or enrolled, or having previously obtained a stamped certificate in pursuance of the said Act, in the same manner as if such Act had not been passed.

Fees now payable in respect of adversary's pleader payable during six months.

2.[b] All fees which are now by law payable upon proceedings in any Court by any party in respect of the fees of his adversary's pleader shall continue to be payable, and may be allowed, during the said period of six calendar months as if the said Act had not been passed.

Persons practising as revenue-agents when Act No. XX of 1865 comes into operation, may continue to practise for six months as if that Act had not passed.

3. Notwithstanding anything contained in the said Act, any person who at the time when such Act shall come into operation shall practise as an agent in any proceeding before the Board of Revenue or in any office subordinate to such Board, in any part of the territories in which the said Act shall take effect, shall and lawfully may continue to practise as an agent before such Board or in such office, as the case may be, for the period of six calendar months from the time when the said Act shall come into operation in that part of India, without being admitted or enrolled, or having previously obtained a stamped certificate in pursuance of the said Act, in the same manner as if such Act had not been passed.

High Court may permit person entitled, without

4. Whenever the High Court shall cause a certificate, whether original or renewed, authorizing the holder to practise as a pleader in the Courts

[a, b] Extended to the Sadr Court, N. W. Provinces, by Act No. IX of 1866.

mentioned in clause (*c*) of section 10 of the said Act, to be issued to a person entitled, under the proviso in section 5 of the same Act, to be admitted and enrolled as a pleader in the High Court without passing any examination, the Court may in such certificate authorize the holder to practise as a pleader in Small Cause Courts in addition to the Courts mentioned in the said clause (*c*),

and he shall thereupon be entitled to practise as last aforesaid, subject to the conditions contained in the said Act as to the duration of, and stamp on, a certificate authorizing the holder to practise as a pleader in the Courts mentioned in the said clause (*c*).

examination, to certificate authorizing him to practise as pleader in Courts mentioned in Act No. XX of 1865, section 10, clause (*c*), to practise in Small Cause Courts.

5. In the construction of this Act and of the said Act No. XX of 1865, the expression 'office subordinate to such Board,' and, in the construction of the latter Act, the expression 'Revenue Office,' shall be taken to apply to Collectors and Deputy Collectors trying suits under Act No. X of 1859 *(to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal)*.

Interpretation-clause.

6. This Act shall be read with and taken as part of "The Pleaders, Mukhtárs and Revenue Agents' Act, 1865."

Act to be part of Act No. XX of 1865.

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## ACT No. V OF 1866.

*Received the Governor General's assent on the 23rd February* 1866.

# An Act to provide a summary procedure on Bills of Exchange and to amend in certain respects the Commercial Law of British India.[a]

WHEREAS it is expedient to provide a summary procedure for the recovery of money due on dishonoured bills of exchange, hundís and promissory notes; and whereas inconvenience is felt by persons engaged in trade by reason of the laws of British India being in some particulars different from those of England in matters of common occurrence in the course of such trade; and whereas, with a view to remedy such inconvenience, it is expedient to amend the laws of British India as hereinafter is mentioned; It is enacted as follows:—

Preamble

1. In this Act, unless there be something repugnant in the subject or context—

Interpretation-clause.

"British India" shall mean the territories which are or may become vested in Her Majesty or Her successors by the Statute 21 & 22 Vic., cap. 106 *(An Act for the better government of India)*:

"British India."

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[a] Declared to apply to the whole of British India except the Scheduled Districts, Act No. XV of 1874. Such declaration does not operate as an exercise of the power conferred by section 8 of Act No. V of 1866: see section 8, clause (b), of Act No. XV of 1874. Sections 2 to 8 of Act No. V of 1866 are taken from 18 & 19 Vic., c. 67.

'High Court."

"High Court" shall mean the High Court of Judicature at Calcutta, Madras or Bombay, as the case may be :

"Local Government."

And in every part of British India in which this Act shall operate, "Local Government" shall mean the person authorized by law to administer executive government in such part.

Form of plaint and summons in summary suits upon bills of exchange.

2. All suits upon bills of exchange, hundís or promissory notes commenced in any High Court within six calendar months after the same shall have become due and payable,[a] may, in case the plaintiff shall desire to proceed under this Act, be commenced as hereinafter is mentioned (that is to say) the plaint shall be in the form prescribed by the Code of Civil Procedure ; but the summons shall be in the form contained in the schedule to this Act ;

Leave to defendant to appear and defend.

and in any case in which the plaint and summons shall be in such forms respectively, it shall not be lawful for the defendant to appear to or defend the suit unless he shall obtain leave from a Judge as hereinafter mentioned so to appear and defend ;[b]

Decree for plaintiff on default by defendant.

and in default of his obtaining such leave, or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest[c] at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by a rule of the High Court, unless the plaintiff claim more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

Defendant showing defence upon merits to have leave to appear.

3. The High Court shall, upon application within the period of seven days[d] from the service of such summons, give leave to appear and to defend the suit, upon the defendant paying into Court the sum mentioned in the summons, or upon affidavits satisfactory to the Court, which disclose a defence, or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application, and on such terms as to security, framing and recording issues, or otherwise, as to the Court may seem fit.

Power to set aside decree.

4. After decree, the High Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to appear to the summons and to defend the suit, if it shall seem reasonable to the Court so to do and on such terms as to the Court may seem just.

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[a] These words might have been repealed. See Act No. IX of 1871, Sched. II, No. 5.

[b] As to cases where there is a doubt as to the good faith of the defence, see 6 Beng., Appendix, 64.

[c] 6 Mad., 257.

[d] 3 Beng., O. C. J., 83.

5. In any proceedings under this Act, it shall be competent to the High Court to order the bill or note sought to be proceeded upon to be forthwith deposited with an officer of the Court, and further to order that all proceedings shall be stayed until the plaintiff shall have given security for the costs thereof.

Power to order bill to be deposited in Court.

6. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Act for the recovery of the amount of such bill or note.

Remedy for recovery of cost of noting non-acceptance of dishonoured bill.

7. The provisions of the Code of Civil Procedure, and all rules made under or by virtue of the said Code shall, so far as the same are or may be made applicable, extend and apply to all proceedings to be had or taken under this Act.

Civil Procedure Code and rules thereunder applied.

8. It shall be lawful for the Local Government to direct that all or any part of the provisions in sections 2 to 7, both inclusive, of this Act shall, *mutatis mutandis*, apply to all or any Courts or Court in the territories under such Government, other than a High Court,[a] and within one month after such order shall have been made and published in the official Gazette, such provisions shall extend and apply in manner directed by such order, and any such order may be in like manner from time to time altered and annulled.

Local Government may extend Act.

In and by any such order the Local Government may direct by whom any powers or duties incident to the provisions applied under this Act, shall and may be exercised with respect to matters in such other Courts or Court, and may make any orders or regulations which may be deemed requisite for carrying into operation in such Courts or Court the provisions so applied.

9, 10. [*Repealed by Act No. IX of* 1872.]

11. No acceptance of any bill of exchange, whether inland or foreign, made after the first day of May 1866, shall be sufficient to bind or charge any person, unless the same be in writing on such bill, or, if there be more than one part of such bill, on one of the said parts, and signed by the acceptor or some person duly authorized by him.[b]

Acceptance of bill, inland or foreign, to be in writing on it, and signed.

12. Every bill of exchange or promissory note drawn or made in any part of British India, and made payable in or drawn upon any person resident in any part of British India, shall be deemed to be an inland bill; but nothing herein contained shall alter or affect the stamp-duty, if any, which, but for this enactment, would be payable in respect of any such bill or note.[c]

What deemed "inland bills."

Saving of stamp-duty.

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[a] Sections 2—7 were extended to the Chief Court of the Panjáb, 24th September 1866; to the Court of the Recorder of Rangoon, *Gazette of India*, 4th April, 1868, p. 492; and to the Madras Court of Small Causes, *Fort St. George Gazette*, 25th August 1874, p. 1259.

[b] 19 & 20 Vic., c. 97, sec. 6.

[c] 19 & 20 Vic., c. 97, sec. 7.

Protest by Notary Public to be *primâ facie* evidence of dishonour.

**13.** Protest of a bill of exchange, whether inland or foreign, when purporting to be made by a Notary Public, shall be *primâ facie* evidence that the bill has been dishonoured.

Suits on lost negotiable instruments.

**14.** In case of any suit founded upon a bill of exchange or other negotiable instrument, if it shall be proved to the satisfaction of the Court that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, it shall be lawful for the Court to make such decree as it would have made if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.[a]

Rights under marine and fire-policies to vest in assignees.

**15.** Every assignee, by endorsement or otherwise, of a policy of marine insurance or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred to and vested in him all rights of suit as if the contract contained in the policy had been made with himself.[b]

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## SCHEDULE.

No. OF SUIT.

In the High Court of at

Plaintiff
Defendant

To [*here enter the defendant's name, description and address*].

Whereas [*here enter the plaintiff's name, description and address*] has instituted a suit in this Court against you under Act No. V of 1866 *(to provide a summary procedure on Bills of Exchange and to amend in certain respects the Commercial Law of British India)* for Rs. principal and interest [*or* Rs. balance of principal and interest] due to him as the payee [*or* indorsee] of a bill of exchange [*or* hundí *or* promissory note] of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within seven days from the service hereof, inclusive of the day of such service, to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such seven days to obtain a decree for any sum not exceeding the sum of Rs. [*here state the sum claimed*] and the sum of Rs. for costs.

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[a] See the Common Law Procedure Act, 1854, sec. 87.

[b] Compare Act No. IX of 1856, and the Statute 31 & 32 Vic., c. 86, and see *Lloyd* v. *Fleming*, L. R. 7 Q. B. 299.

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

[*Here copy the bill of exchange, hundí or promissory note, and all endorsements upon it.*]

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## ACT No. VI OF 1866.

*Received the Governor General's assent on the 2nd March* 1866.

An Act to continue Act No. XXXI of 1860 *(relating to the manufacture, importation and sale of arms and ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases)* and for other purposes.

WHEREAS Act No. XXXI of 1860 as continued by Act No. VI of 1865 will expire on the first day of October 1866; and whereas it is expedient to continue the said Act No. XXXI of 1860 with such modifications as are hereinafter mentioned; and whereas it is desirable to render the license mentioned in the 26th and other sections of the same Act grantable upon conditions, and to enable the Local Governments to exempt classes of persons, districts and parts of districts from the operation of sections 25 and 26 of the same Act; It is enacted as follows:— Preamble.

1. Act No. VI of 1865 and the second clause of section 55 of Act No. XXXI of 1860 are hereby repealed; but the rest of the Act last hereinbefore mentioned shall, subject to the modifications hereinafter mentioned, continue in force from the passing of this Act until the Governor General of India in Council shall by an order published in the *Gazette of India* declare otherwise. Enactments repealed. Act No. XXXI of 1860 continued.

2. The license mentioned in sections 26, 28, 29 and 30 of the said Act No. XXXI of 1860 may be granted by the Magistrate or other person specially authorized to grant the same, subject to such condition or conditions, if any, as such Magistrate or other person shall think fit; and on breach of any such condition, or failure to comply therewith, such license shall thereupon be null and void. Licenses to bear arms may be granted on conditions. When null.

3. For the last clause of section 27 of the same Act, the following words shall be substituted (that is to say) "Such other persons, classes of persons, districts or parts of districts as the Local Government may by notification in the official Gazette from time to time exempt from such provisions." Amendment of section 27 of Act No. XXXI of 1860.

4. This Act may be cited as "The Arms' Act Continuance Act, 1866." Short title.

# THE INDIAN COMPANIES' ACT, 1866.

## ARRANGEMENT OF SECTIONS.

*Preliminary.*

SECTION.
1. Short title.
2. Commencement of Act.
3. Interpretation-clause.
4. Prohibition of partnerships exceeding certain number.
5. Division of Act.

## PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

*Memorandum of Association.*

6. Mode of forming company.
7. Mode of limiting liability of members.
8. Memorandum of association of company limited by shares.
9. Memorandum of association of company limited by guarantee.
10. Memorandum of association of unlimited company.
11. Stamp, signature and attestation of memorandum.
Effect.
12. Power of certain companies to alter memorandum of association.
13. Power of companies to change name.
Effect of change.
Proceedings in new name.

*Articles of Association.*

14. Memorandum to be accompanied by articles of association.
Form of articles.
Provisions.
Statement of capital, and of number of members.
Subscribers to be shareholders.
15. Application of table A.
16. Stamp, signature and attestation of articles.
Effect.
Monies payable by members deemed debts.

SECTION.

*General Provisions.*

17. Registration of memorandum and articles.
Fees.
Account to Government.
18. Effect of registration.
Proof of registration.
19. Supply of copies of memorandum and articles.
Penalty for default.
20. Prohibition against identity of names in companies.
Change of name inadvertently taken.
Effect of such change.

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## PART II.

### DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

*Distribution of Capital.*

21. Nature of interest in company.
Numbering shares.
22. Definition of "Member."
23. Transfer by personal representative.
24. Register of members.
Penalty on company for default, and
on director or manager.
25. Annual list of members.
Contents.
Entry of list in register.
Copy to Registrar.
26. Penalty on company, &c., not sending list and summary.
On director or manager.
27. Notice of consolidation or of conversion of capital into stock.
28. Effect of conversion of shares into stock.
29. Entry of trusts on register.
30. Certificate of shares or stock evidence of title.
31. Place of keeping register.
Inspection.
Supplying copies.

SECTION.

Penalty on company for default.
on director or manager.
Power to compel inspection.
32. Power to close register.
33. Notice to Registrar of increase of capital and of members.
Record thereof.
Penalty on company for default.
on director or manager.
34. Procedure in case of default as to registry.
Powers of Court.
Appeal.
35. Notice to Registrar of rectification of register.
36. Register to be evidence.

*Liability of Members.*

37. Liability of present and past members of company.

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## PART III.

### MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

*Provisions for Protection of Creditors.*

38. Company to have registered office.
Penalty for default.
39. Notice of situation of registered office.
40. Publication of name by limited company.
41. Penalties for default as to publication and use of name.
42. Contracts how made.
43. Keeping register of mortgages.
Penalty for default.
Inspection of register.
Penalty for refusing inspection.
Power to compel inspection.
44. Statement to be made by certain companies.
Publication.
Penalty on company for default.
on director or manager.
Right to copies.
45. Keeping list of directors.

SECTION.

Copy to Registrar.
46. On default as to register of directors,
penalty on company,
on director or manager.
47. Promissory notes, bills of exchange and hundís.
48. Liability of members of company carrying on business with less than seven members.

*Provisions for Protection of Members.*

49. General meeting.
Balance-sheet.
Audit.
Penalty for default.
50. Power by special resolution to alter regulations, or make new regulations.
Force of new regulations and liability to modification.
51. Definition of special resolution.
Proof of resolution being carried.
When notice duly given and meeting duly held.
Computing majority under poll.
52. Votes of members.
Summoning meetings.
Persons competent to summon.
Chairman.
53. Registry of special resolutions.
Penalty on company for default ;
on director or manager.
54. Recording special resolutions.
Supplying copies.
Penalty on company for default ;
on director or manager.
55. Execution of deeds abroad.
56. Power of Local Government to appoint inspectors
in case of company with capital in shares ;
and of company with capital not in shares.
57. Application for inspection to be supported by evidence.
Power to require security.
58. Duty of officers towards inspectors.
Power of inspectors to examine officers.

SECTION.

Penalty on officers for default.

59. Report of inspectors.

Supply of copies.

Defraying expense of examination.

60. Power of company to appoint inspectors.

Powers and duties of inspectors.

Penalty on officers for default.

61. Report of inspectors to be evidence.

*Notices.*

62. Service of process on company;

and of notice on Registrar.

63. Service by post.

Proof of service.

64. Authentication of process by company.

*Legal Proceedings.*

65. Recording minutes of proceedings at meetings.

Minutes to be evidence.

Validity of meetings;

resolutions;

appointments;

acts done.

66. Power to stay proceedings in suits brought by limited companies until security for costs given.

67. Suits by company against members.

*Alteration of Forms.*

68. Use of forms in schedule.

Power to alter tables and forms.

Publication and effect of altered tables and forms.

*Arbitrations.*

69. Reference of matters to arbitration.

Delegation of powers to referees.

70. Power to alter or revoke agreements for reference.

71. Agreements to be carried into effect.

72. Reference to sole arbitrator.

73. Reference to two or more arbitrators.

SECTION.

74. Appointment of arbitrators by companies.
75. Appointment of arbitrators by Local Government.
76. Appointment of arbitrators by companies to supply vacancies.
77. Appointment of arbitrators by Local Government to supply vacancies.
78. Revocation of appointment of arbitrator.
79. Appointment of umpire by arbitrators.
80. Appointment of umpire by Local Government.
81. Appointment of umpire by arbitrators to supply vacancy.
82. Appointment of umpire by Local Government to supply vacancy.
83. Powers of succeeding arbitrators and umpires.
84. Reference to umpire.
85. Power for arbitrators, &c., to call for books, &c., and administer oath.
86. Procedure in arbitration.
87. Arbitration may proceed in absence of companies.
88. Several awards may be made.
Force of awards.
89. Awards made in due time to bind all parties.
90. Power for umpire to extend period for making his award.
Effect of award made in extended time.
91. Awards not set aside for informality.
92. Awards to be obeyed.
93. Agreements, arbitrations and awards to have effect.
Power to compel observance.
94. Discretion as to costs of arbitration and award.
95. Costs by whom borne.
96. Submission to arbitration may be filed in Court.
Civil Procedure Code applied.

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## PART IV.

### WINDING-UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

*Preliminary.*

97. Meaning of 'contributory.'
98. Nature of liability of contributory.
Liability of estate of insolvent contributory.
99. Liability of representatives of deceased contributories.
100. Liability of assignees of insolvent contributories.

SECTION.

*Winding-up by Court.*

101. Circumstances under which company may be wound up by Court.
102. Company when deemed unable to pay its debts.
103. Definition of "the Court."
104. Form and presentation of application for winding-up.
Effect of order on application.
105. Commencement of winding-up by Court.
106. Court may grant injunction.
And appoint official liquidator.
107. Powers of Court on hearing petition.
108. Prosecution of suits after order for winding-up.
109. Copy of order to be forwarded to Registrar.
110. Power of Court to stay proceedings.
111. Effect of order on share-capital of company limited by guarantee.
112. Court may regard wishes of creditors or contributories;
direct meetings;
and appoint chairman.

*Official Liquidators.*

113. Official liquidators may be appointed provisionally or otherwise.
Court to declare by whom necessary acts to be done.
Security.
Custody of property.
114. Resignation and removal.
Filling up vacancies.
Remuneration.
115. Style of official liquidator.
Duties.
116. Powers of official liquidator as to—
suits and prosecutions:
carrying on business:
sale and transfer of property:
execution of deeds:
insolvent contributories:
bills of exchange, &c.:
raising funds.
Effect of drawing, acceptance, &c.
Deceased contributories.

SECTION.

Saving of rights of Administrators General.

Winding-up and distribution.

117. Discretion of official liquidator.

118. Appointment of attorney or vakíl to official liquidator.

*Ordinary Powers of Court.*

119. Settlement of list of contributories.

Rectification of register of members.

Collection and application of assets.

120. Distinction of direct and representative contributories.

121. Power of Court to require delivery of property.

122. Power of Court to order payment of debts by contributory; and to allow set-off.

Set-off against subsequent calls.

123. Power of Court to make calls.

Regard to probable default by some contributories.

124. Power of Court to order payment into bank.

125. Regulation of account with Court.

126. Administration of property of deceased contributory on default by representative.

127. Effect of order of Court on contributory.

128. Court may exclude creditors not proving within certain time.

129. Court to adjust rights of contributories.

130. Power to make order as to payment of costs.

131. Dissolution of company.

132. Registrar to make minute of dissolution.

133. Penalty on not reporting dissolution.

*Extraordinary Powers of Court.*

134. Power of Court to summon persons before it suspected of having property of company.

Production of documents.

Apprehension of person refusing.

Lien on documents produced.

135. Examination of parties by Court.

136. Power to arrest contributory about to abscond or to remove or conceal property.

137. Powers of Court cumulative.

SECTION.

*Enforcement of and Appeal from Orders.*

138. Enforcement of orders.
139. Order of one Court to be enforced by others.
140. Procedure in respect of orders of one Court to be enforced by others.
141. Rehearings and appeals.
Notice to be given.
142. Judicial notice of signature of officers and seal of Court.
143. Special commissioners for receiving evidence.
Power to refer examinations to them.
Powers of commissioners.
Return of examinations.
144. Judicial notice of seal, &c., on affidavits, &c., sworn in British India, Great Britain or Ireland, or abroad.

*Voluntary winding-up of Company.*

145. Circumstances under which company may be wound up voluntarily.
Extraordinary resolution.
146. Commencement of voluntary winding-up.
147. Effect of voluntary winding-up on status of company.
148. Notice of resolution to wind up voluntarily.
149. Consequences of voluntary winding-up.
150. Effect of winding-up on share-capital of company limited by guarantee.
151. Power of company to delegate authority to appoint liquidators.
Acts done in pursuance.
152. Arrangement when binding on company and creditors.
153. Power of creditor or contributory to appeal.
154. Determination of questions and exercise of powers by Court on application of liquidators or contributories.
155. Power of liquidators to call general meeting.
General meeting to receive account and conduct of winding-up.
156. General meeting to fill up vacancy in office of liquidators.
157. Appointment of liquidator by Court.
Removal and replacement.
158. Account on conclusion of winding-up.
General meeting to receive it.
Calling of meeting.
159. Liquidators to report meeting to Registrar.
Dissolution.

SECTION.

Penalty for not reporting.

160. Payment of costs of voluntary liquidation.

161. Saving of rights of creditors.

162. Power of Court to adopt proceedings of voluntary winding-up.

*Winding-up subject to the Supervision of the Court.*

163. Power of Court, on application, to direct winding-up subject to supervision.

164. Petition for winding-up subject to supervision.

165. Court may have regard to wishes of creditors and contributories;
direct meetings,
and appoint chairman.

166. Power to Court to appoint additional liquidators.
Powers of such liquidators.
Removal and replacement.

167. Effect of order of Court for winding-up subject to supervision.
Meaning of official liquidator.

168. Appointment of voluntary liquidators to office of official liquidators.

*Supplemental Provisions.*

169. Avoiding of dispositions after commencement of winding-up.

170. Books of company to be evidence.

171. Disposal of books, accounts and documents of company.
Responsibility therefor.

172. Inspection of books.

173. General scheme of liquidation may be sanctioned.

174. Power to compromise.

175. Power for liquidators to accept shares, &c., as consideration for sale of property of company,
or arrange for participation in profits of purchasing company.
Right of dissentient member.
Validity of special resolution.

176. Determining price of interest of dissentient.

177. Appointment of arbitrator when questions to be determined by arbitration.
Revocation.
Appointment of sole arbitrator by one party when other fails.
Award.

178. Appointment of arbitrator to fill vacancy.

SECTION.

Proceeding *ex parte* by remaining arbitrator.
Powers of substituted arbitrator.
179. Appointment of umpire.
Replacement of umpire dying, &c.
Decision.
180. Power of arbitrators to call for books, &c.
181. Discretion as to costs.
182. Filing of submission to arbitration.
Civil Procedure Code applied.
183. Certain attachments, distresses and executions void.
184. Fraudulent preference.
Application or resolution for winding-up equivalent to act of insolvency.
Assignment to trustees for creditors void.
185. Power of Court to assess damages against delinquent directors and officers.
186. Penalty for destroying or falsifying books.
187. Prosecution of delinquent directors in winding-up by Court.
188. Penalty of false evidence.

*Power of High Court to make Rules.*

189. Power of High Court to make rules.
Practice to apply till rules made.

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## PART V.

### REGISTRATION OFFICE.

190. Registration of companies.
Power to appoint and remove officers:
to regulate their duties:
to determine places where offices to be established:
to direct use of seal.
Inspection of documents.
Fees.
Certificate of incorporation.
Fees.
Continuance of existing officers.
Salaries of officers.
Doing of acts required by Act to be done to or by Registrar.

SECTION.

## PART VI.

### APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT STOCK COMPANIES' ACTS.

191. Application of Act to companies formed and registered under Act XIX of 1857 or VII of 1860.
Power of altering regulations by special resolution.
192. Application of Act to companies registered, but not formed under Act XIX of 1857 or VII of 1860.
193. Transfer of shares.

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## PART VII.

### COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

194. Companies capable of being registered.
Registration for winding-up.
195. Regulations as to registration under Part VII.
Companies which cannot register.
Companies which cannot register as unlimited or limited by guarantee.
Companies which cannot register as limited by shares.
Assent required in all cases.
Assent in case of company not limited desiring to register as limited.
Resolution to accompany assent in case of company registering as limited by guarantee.
Computing majority.
196. Definition of joint stock company.
197. Documents to be delivered before registration of joint stock companies.
198. Documents to be delivered before registration of company not with joint stock.
199. Document to be delivered by company with capital converted into stock.
200. Verification of statements.
201. Registrar may require evidence as to nature of company.
202. Notice to customers before registration of banking company with limited liability.
Service of notice.
Effect of omission to give notice.
203. Companies exempted from payment of fees.
204. Company to change name.
205. Issue and effect of certificate of incorporation.

SECTION.
206. Certificate to be evidence of compliance with Act.
Date of incorporation.
207. Transfer of property to company as incorporated.
208. Registration not to affect prior rights and obligations.
209. Continuation of existing suits.
Bar to execution against individual member.
Effect of company's assets being insufficient to satisfy decree.
210. Effect of registration under Act.
Application of Act to registered company.
Proviso—
as to table A:
numbering of shares:
power to alter enactments:
or provisions of Letters Patent:
contributories in case of winding-up, and their liability:
application of provisions in case of their death, insolvency or marriage:
alteration of provisions of deeds, &c.:
power to alter constitution and regulations.
211. Power of Court to restrain further proceedings.
212. Effect, as to suits and proceedings, of order for winding-up.

## PART VIII.

### APPLICATION OF ACT TO UNREGISTERED COMPANIES.

213. Winding-up of unregistered companies.
Application of Act.
In what place to be deemed to be registered.
Which to be deemed the registered office.
No winding-up voluntarily or under supervision.
When company may be wound up.
When deemed unable to pay debts.
214. Who to be deemed contributory in event of company being wound up.
His liability
Provisions applied in case of death or insolvency.
215. Power of Court to restrain further proceedings.
216. Effect, as to suits and proceedings, of order for winding-up.
217. Power to Court to direct property to vest in official liquidator.
And to liquidator thereupon to bring and defend suits.
218. Provisions of this Part of Act cumulative.
Additional powers of Court and liquidator.

PART IX.

REPEAL OF ACTS AND MISCELLANEOUS PROVISIONS.

SECTION.
219 to 222. [*Repealed*].
223. Compulsory registration of certain companies.
Exemption from fees.
224. Consequence of omission to register.
225. Cognizance of offences under Act.
226. Punishment of offences under Act, committed within local limits of High Court.
227. Levy of penalties by distress.
228. Arrest and detention until return made to distress-warrant.
229. Imprisonment if no sufficient distress.
230. Construction of "Registrar of Joint Stock Companies" in Act No. XXI of 1860.
231. Act not to apply to Banks of Bengal, Madras or Bombay.

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ACT No. X OF 1866.

*Received the Governor General's assent on the 12th March 1866.*

## An Act for the incorporation, regulation, and winding up of Trading Companies and other Associations.[a]

WHEREAS it is expedient that the laws relating to the incorporation, regulation and winding-up of trading companies and other associations should be consolidated and amended; It is enacted as follows:— Preamble.

*Preliminary.*

1. This Act may be cited for all purposes as "The Indian Companies' Act, 1866." Short title.

2. This Act shall come into operation on the first day of May 1866, and the time at which it so comes into operation is hereinafter referred to as the commencement of this Act. Commencement of Act.

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[a] Declared to apply to the whole of British India, except the Scheduled Districts, Act No. XV of 1874. Transcribed chiefly from 25 & 26 Vic., c. 89. Sections 70—96 are from the Railway Companies' Arbitration Act, 1859 (22 & 23 Vic., c. 59). "The Crown is not, either expressly, or, as we think, by implication, bound by the Indian Companies' Act (X of 1866)", 5 Bomb., O. C. J., 27.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context:—

"British India."

"British India" means the territories which are or may become vested in Her Majesty or Her successors by the Statute 21 & 22 Vic., cap. 106, entitled "An Act for the better government of India:"

"Year." "Month."

"Year" and "month" respectively denote a year and month reckoned according to the British calendar:

"Insurance Company."

An "Insurance Company" means a company that carries on the business of insurance either solely or in common with any other business or businesses:

"Court."

"Court" means the principal civil Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction:

"District Court."

"District Court" means the principal civil Court of original jurisdiction in a district, but does not include the High Court in the exercise of its ordinary original civil jurisdiction;

"Local Government."

And, in any part of British India in which this Act operates, "Local Government" means the person authorized by law to administer executive government in such part and includes a Chief Commissioner; and

"High Court."

"High Court" denotes the highest civil Court of appeal therein.

Prohibition of partnerships exceeding certain number.

4. No company, association or partnership consisting of more than ten persons shall be formed, after the commencement of this Act, for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor General of India in Council, or by Royal Charter or Letters Patent;

and no company, association or partnership consisting of more than twenty persons shall be formed, after the commencement of this Act, for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act or of Letters Patent.

Division of Act.

5. This Act is divided into nine Parts relating to the following subject-matters:—

The first Part—to the constitution and incorporation of companies and associations under this Act:

The second Part—to the distribution of the capital and liability of members of companies and associations under this Act:

The third Part—to the management and administration of companies and associations under this Act:

The fourth Part—to the winding-up of companies and associations under this Act:

The fifth Part—to the registration-office:

The sixth Part—to the application of this Act to companies registered under Act No. XIX of 1857[a] *(for the incorporation and regulation of Joint Stock Companies and other Associations either with or without limited liability of the Members thereof)*, and Act No. VII of 1860[b] *(to enable Joint Stock Banking Companies to be formed on the principle of limited liability)*, or either of them:

The seventh Part—to companies authorized to register under this Act:

The eighth Part—to the application of this Act to unregistered companies:

The ninth Part—to repeal of Acts.

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## PART I.

### CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

*Memorandum of Association.*

Mode of forming company.

**6.** Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated company, with or without limited liability.

Mode of limiting liability of members.

**7.** The liability of the members of a company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up.

Memorandum of association of company limited by shares.

**8.** Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the memorandum of association shall contain the following things; (that is to say)—

(1.) the name of the proposed company, with the addition of the word "limited" as the last word in such name:

(2.) the part of British India in which the registered office of the company is proposed to be situate:

(3.) the objects for which the proposed company is to be established:

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[a] Repealed by section 219 of this Act. Table B applies to companies existing on 1st May 1866.

[b] Repealed by section 219 of this Act.

(4.) a declaration that the liability of the members is limited :

(5.) the amount of capital with which the company proposes to be registered, divided into shares of a certain fixed amount,

subject to the following regulations :—

(1.) that no subscriber shall take less than one share :

(2.) that each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

Memorandum of association of company limited by guarantee.

**9.** Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, hereinafter referred to as a company limited by guarantee, the memorandum of association shall contain the following things ; (that is to say)—

(1.) the name of the proposed company, with the addition of the word "limited" as the last word in such name :

(2.) the part of British India in which the registered office of the company is proposed to be situate :

(3.) the objects for which the proposed company is to be established :

(4.) a declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of winding-up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding a specified amount.

Memorandum of association of unlimited company.

**10.** Where a company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited company, the memorandum of association shall contain the following things ; (that is to say)—

(1.) the name of the proposed company :

(2.) the part of British India in which the registered office of the company is proposed to be situate :

(3.) the objects for which the proposed company is to be established.

Stamp, signature and attestation of memorandum.

**11.** The memorandum of association shall bear the same stamp as if it were a deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least.

Effect.

It shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Act.

12. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital, by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock; **Power of certain companies to alter memorandum of association.**

but, save as aforesaid, and save as hereinafter provided in the case of a change of name, no alteration shall be made by any company in the conditions contained in its memorandum of association.

13. Any company under this Act, with the sanction of a special resolution of the company passed in manner hereinafter mentioned, and with the approval of the Local Government testified in writing under the hand of one of the secretaries to such Government, may change its name, and upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; **Power of companies to change name.**

but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company; **Effect of change.**

and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name. **Proceedings in new name.**

*Articles of Association.*

14. The memorandum of association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient. **Memorandum to be accompanied by articles of association.**

The articles shall be expressed in separate paragraphs, numbered arithmetically: **Form of articles.**

They may adopt all or any of the provisions contained in the table marked A in the first schedule hereto: **Provisions.**

They shall, in the case of a company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered; and in the case of a company, whether limited by guarantee or unlimited, that has not a capital divided **Statement of capital, and**

of number of members.

into shares, state the number of members with which the company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration.

Subscribers to be shareholders.

In a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

Application of table A.

15. In the case of a company limited by shares, if the memorandum of association is not accompanied by articles of association, or, in so far as the articles do not exclude or modify the regulations contained in the table marked A in the first schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association and the articles had been duly registered.

Stamp, signature and attestation of articles.

16. The articles of association shall be printed, they shall bear the same stamp as if they were contained in a deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least.

Effect.

When registered, they shall bind the company and the members thereof to the same extent as if each member had subscribed his name thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this Act.

Monies payable by members deemed debts.

All monies payable by any member to the company, in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the company.

*General Provisions.*

Registration of memorandum and articles.

17. The memorandum of association and the articles of association, if any, shall be delivered to the Registrar of Joint Stock Companies hereinafter mentioned, who shall retain and register the same.

Fees.

There shall be paid to the Registrar by a company having a capital divided into shares, in respect of the several matters mentioned in the table marked B in the first schedule hereto, the several fees therein specified, or such smaller fees as the Governor General of India in Council may from time to time direct, and by a company not having a capital divided into shares, in respect of the several matters mentioned in the table marked C in the first schedule hereto, the several fees therein specified, or such smaller fees as the Governor General of India in Council may from time to time direct.

Account to Government.

All fees paid to the said Registrar in pursuance of this Act shall be accounted for to Government.

18. Upon the registration of the memorandum of association and of the articles of association in cases where articles of association are required by this Act, or by the desire of the parties, to be registered, the Registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited ; Effect of registration.

the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company, in the event of the same being wound up, as is hereinafter mentioned.

A certificate of the incorporation of any company given by the Registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with. Proof of registration.

19. A copy of the memorandum of association having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of the sum of one rupee, or such less sum as may be prescribed by the company for each copy ; Supply of copies of memorandum and articles.

and if any company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member in pursuance of this section, the company so making default shall for each offence incur a penalty not exceeding twenty rupees. Penalty for default.

20. No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting company is in the course of being dissolved and testifies its consent in such manner as the Registrar requires. Prohibition against identity of names in companies.

If any company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned company may, with the sanction of the Registrar, change its name, and upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case ; Change of name inadvertently taken.

but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be con- Effect of such change.

tinued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

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## PART II.

### Distribution of Capital and Liability of Members of Companies and Associations under this Act.

*Distribution of Capital.*

Nature of interest in company.

**21.** The shares or other interest of any member in a company under this Act shall be moveable property capable of being transferred in manner provided by the regulations of the company, and shall not be of the nature of real estate or immoveable property; and each share shall, in the case of a company having a capital divided into shares, be distinguished by its appropriate number.

Numbering shares.

Definition of "Member."

**22.** The subscribers of the memorandum of association of any company under this Act shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a company under this Act, and whose name is entered on the register of members, shall be deemed to be a member of the company.

Transfer by personal representative.

**23.** Any transfer of the share or other interest of a deceased member of a company under this Act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Register of members.

**24.** Every company under this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars:—

(1) the names and addresses, and the occupations, if any, of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number; and of the amount paid or agreed to be considered as paid on the shares of each member:

(2) the date at which the name of any person was entered in the register as a member:

(3) the date at which any person ceased to be a member.

Penalty on company for default, and

Any company acting in contravention of this section shall incur a penalty not exceeding fifty rupees for every day during which its default in complying

with the provisions of this section continues, and every director or manager of the company who shall knowingly and wilfully authorize or permit such contravention shall incur the like penalty.

on director or manager.

25. Every company under this Act and having a capital divided into shares shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or, if there is more than one ordinary meeting in each year, the first of such ordinary general meetings, is held, are members of the company.

Annual list of members.

Such list shall state the names, addresses and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars:—

Contents.

(1) the amount of the capital of the company and the number of shares into which it is divided:

(2) the number of shares taken from the commencement of the company up to the date of the summary:

(3) the amount of calls made on each share:

(4) the total amount of calls received:

(5) the total amount of calls unpaid:

(6) the total amount of shares forfeited:

(7) the names, addresses and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy shall forthwith be forwarded to the Registrar of Joint Stock Companies.

Entry of list in register.

Copy to Registrar.

26. If any company under this Act and having a capital divided into shares makes default in complying with the provisions of this Act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar, such company shall incur a penalty not exceeding fifty rupees for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Penalty on company, &c., not sending list and summary.

On director or manager.

27. Every company under this Act having a capital divided into shares that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall within fifteen days of such consolidation, division or conversion, give notice to the Registrar of Joint Stock Campanies of the same, specifying the shares so consolidated, divided or converted.

Notice of consolidation or of conversion of capital into stock.

Effect of conversion of shares into stock.

28. Where any company under this Act and having a capital divided into shares has converted any portion of its capital into stock, and given notice of such conversion to the Registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the company, and the list of members to be forwarded to the Registrar, shall show the amount of stock held by each member in the list, instead of the amount of shares and the particulars relating to shares hereinbefore required.

Entry of trusts on register.

29. No notice of any trust, express, implied or constructive, shall be entered on the register or be receivable by the Registrar in the case of companies under this Act and registered in British India.

Certificate of shares or stock evidence of title.

30. A certificate under the common seal of the company, specifying any share or shares or stock held by any member of a company, shall be *primâ facie* evidence of the title of the member to the share or shares or stock therein specified.

Place of keeping register.

31. The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company hereinafter mentioned.

Inspection.

Except when closed as hereinafter mentioned, it shall, during business-hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one rupee or such less sum as the company may prescribe for each inspection.

Supplying copies.

Every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of two annas for every hundred words required to be copied.

Penalty on company for default.

If such inspection or copy is refused, the company shall incur for each refusal a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues.

On director or manager.

Every director and manager of the company who shall knowingly authorize or permit such refusal shall incur the like penalty.

Power to compel inspection.

In addition to the above penalty any Judge of a High Court may by order compel an immediate inspection of the register.

Power to close register.

32. Any company under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of members for any time or times not exceeding in the whole thirty days in each year.

33. Where a company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and, where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the Registrar, in the case of an increase of capital within fifteen days from the date of the passing of the resolution by which such increase has been authorized, and in the case of an increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place, and the Registrar shall forthwith record the amount of such increase of capital or members.

Notice to Registrar of increase of capital and of members.

Record thereof.

If such notice is not given within the period aforesaid, the company in default shall incur a penalty not exceeding one hundred rupees for every day during which such neglect to give notice continues, and every director and manager of the company, who shall knowingly and wilfully authorize or permit such default, shall incur the like penalty.

Penalty on company for default.

On director or manager.

34. If the name of any person is without sufficient cause entered in, or omitted from, the register of members of any company under this Act, or if default is made, or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may, by application to the principal Court of original civil jurisdiction in the district or place in which the registered office of the company is situate, apply for an order of the Court that the register may be rectified;

Procedure in case of default as to registry.

and the Court may either refuse such application, with or without costs to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such application, and any damages the party aggrieved may have sustained.

Powers of Court.

The Court may in any proceeding under this section decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in, or omitted from, the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally the Court may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register;

provided that the Court may direct an issue to be tried in which any question of law may be raised,

Appeal.

and an appeal in the manner directed by the Code of Civil Procedure shall lie.

Notice to Registrar of rectification of register.

**35.** Whenever any order has been made for rectifying the register in the case of a company hereby required to send a list of its members to the Registrar, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar.

Register to be evidence.

**36.** The register of members shall be *primâ facie* evidence of any matters by this Act directed or authorized to be inserted therein.

*Liability of Members.*

Liability of present and past members of company.

**37.** In the event of a company formed under this Act being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges and expenses of the winding-up and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following; (that is to say)—

(1.) no past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up:

(2.) no past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member

(3.) no past member shall be liable to contribute to the assets of the company, unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:

(4.) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:

(5.) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association:

(6.) nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract, whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract:

(7.) no sum due to any member of a company in his character of a member by way of dividends, profits or otherwise, shall be deemed to be a

debt of the company payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves.

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## PART III.

### MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

*Provisions for Protection of Creditors.*

**38.** Every company under this Act shall have a registered office to which all communications and notices may be addressed.

Company to have registered office.

If any company under this Act carries on business without having such an office, it shall incur a penalty not exceeding fifty rupees for every day during which business is so carried on.

Penalty for default.

**39.** Notice of the situation of such registered office and of any change therein shall be given to the Registrar and recorded by him.

Notice of situation of registered office.

Until such notice is given, the company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

**40.** Every limited company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible in the English language, and also, if the registered office be situate in a district beyond the local limits of the ordinary original civil jurisdiction of a High Court, in one of the vernacular languages used in such district,

Publication of name by limited company.

and shall have its name engraven in legible characters in such language or languages on its seal,

and shall have its name mentioned in legible characters in such language or languages in all notices, advertisements and other official publications of such company, and in all bills of exchange, hundís, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

**41.** If any limited company under this Act does not paint or affix and keep painted or affixed its name, in manner directed by this Act, it shall be

Penalties for default as to publication

and use of name.

liable to a penalty not exceeding fifty rupees for not so painting or affixing its name and for every day during which such name is not so kept painted or affixed.

Every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall be liable to the like penalty.

If any director, manager or officer of such company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement or other official publication of such company, or signs or authorizes to be signed on behalf of such company, any bill of exchange, hundí, promissory note, endorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt or letter of credit of the company wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of one thousand rupees, and shall further be personally liable to the holder of any such bill of exchange, hundí, promissory note, cheque or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Contracts how made.

**42.** Contracts on behalf of any company registered under this Act may be made as follows; (that is to say)—

(1.) any contract which, if made between private persons, would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and such contract may be in the same manner varied or discharged:

(2.) any contract which, if made between private persons, would be by law required to be in writing signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged:

(3). any contract which, if made between private persons, would by law be valid, although made by parol only and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged.

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors, and all other parties thereto, their heirs, executors or administrators, as the case may be.

**43.** Every limited company under this Act shall keep a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge.

Keeping register of mortgages.

If any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager or other officer of the company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding five hundred rupees.

Penalty for default.

The register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times.

Inspection of register.

If such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues.

Penalty for refusing inspection.

In addition to the above penalty any Judge of the High Court may by order compel an immediate inspection of the register.

Power to compel inspection.

**44.** Every limited banking company and every insurance company, and deposit, provident or benefit society under this Act, shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked D in the first schedule hereto, or as near thereto as circumstances will admit, and a copy of such statement shall be put up in a conspicuous place in the registered office of the company and in every branch office or place where the business of the company is carried on.

Statement to be made by certain companies.

Publication.

If default is made in compliance with the provisions of this section, the company shall be liable to a penalty not exceeding fifty rupees for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Penalty on company for default.

On director or manager.

Every member and every creditor of any company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding eight annas.

Right to copies.

**45.** Every company under this Act and not having a capital divided into shares shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and

Keeping list of directors.

Copy to Registrar.

shall send to the Registrar of Joint Stock Companies a copy of such register, and shall from time to time notify to the Registrar any change that takes place in such directors or managers.

On default as to register of directors,

**46.** If any company under this Act and not having a capital divided into shares, makes default in keeping a register of its directors or managers, or in sending a copy of such register to the Registrar in compliance with the foregoing rules, or in notifying to the Registrar any change that takes place in such directors or managers, such delinquent company shall incur a penalty not exceeding one hundred rupees for every day during which such default continues,

penalty on company,

on director or manager.

and every director or manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Promissory notes, bills of exchange and hundís.

**47.** A promissory note, bill of exchange or hundí shall be deemed to have been made, accepted or endorsed on behalf of any company under this Act, if made, accepted or endorsed in the name of the company by any person acting under the authority of the company, or if made, accepted or endorsed by or on behalf or on account of the company, by any person acting under the authority of the company.

Liability of members of company carrying on business with less than seven members.

**48.** If any company under this Act carries on business when the number of its members is less than seven, for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debt of the company contracted during such time, and may be sued for the same without the joinder in the suit of any other member.

*Provisions for Protection of Members.*

General meeting.

**49.** A general meeting of every company under this Act shall be held once at the least in every year.

Balance-sheet.

A balance-sheet shall be made out in every year, and laid before the company in general meeting and filed with the Registrar of Joint Stock Companies, and such balance-sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to table A in the first schedule hereto, or as near thereto as circumstances admit.

Audit.

And once at the least in every year the accounts of the company shall be examined and the correctness of the balance-sheet ascertained by one or more auditor or auditors.

If default is made in compliance with any of the provisions of this section, every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall be liable to a penalty of one thousand rupees. Penalty for default.

**50.** Subject to the provisions of this Act, and to the conditions contained in the memorandum of association, any company formed under this Act may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association, or in the table marked A in the first schedule, where such table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company. Power by special resolution to alter regulations, or make new regulations.

Any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution. Force of new regulations and liability to modification.

**51.** A resolution passed by a company under this Act shall be deemed to be special, whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled, according to the regulations of the company, to vote, as may be present in person or by proxy (in cases where by the regulations of the company proxies are allowed) at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the company, to vote, as may be present in person or by proxy at a subsequent general meeting of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month, from the date of the meeting at which such resolution was first passed. Definition of special resolution.

At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same. Proof of resolution being carried.

Notice of any meeting shall, for the purposes of this section, be deemed to be duly given, and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company. When notice duly given and meeting duly held.

In computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company. Computing majority under poll.

Votes of members. Summoning meetings.

52. In default of any regulations as to voting, every member shall have one vote, and in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the table marked A in the first schedule hereto.

Persons competent to summon.

In default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same, and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Chairman.

Registry of special resolutions.

53. A copy of every special resolution that is passed by any company under this Act shall be printed and forwarded to the Registrar of Joint Stock Companies, and be recorded by him.

Penalty on company for default;

If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding twenty rupees for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded,

on director or manager.

and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Recording special resolutions.

54. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution.

Supplying copies.

Where no articles of association have been registered, a copy of every special resolution shall be forwarded in print to any member requesting the same, on payment of one rupee or such less sum as the company may direct.

Penalty on company for default;

If any company makes default in complying with the provisions of this section, it shall incur a penalty not exceeding twenty rupees for each copy in respect of which such default is made;

on director or manager.

and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Execution of deeds abroad.

55. Any company under this Act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in British India; and every deed signed by such attorney on behalf of the company and under his seal, shall be binding on the company and have the same effect as if it were under the common seal of the company.

**56.** The Local Government may appoint one or more competent inspectors to examine into the affairs of any company under this Act, and to report thereon in such manner as the Local Government may direct upon the applications following (that is to say)— Power of Local Government to appoint inspectors

(1.) in the case of a banking or any other company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued: in case of company with capital in shares

(2) in the case of any company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members. and of company with capital not in shares.

**57.** The application shall be supported by such evidence as the Local Government may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same. Application for inspection to be supported by evidence

The Local Government may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors. Power to require security.

**58.** It shall be the duty of all officers and agents of the company to produce for the examination of the inspectors all books and documents in their custody or power. Duty of officers towards inspectors.

Any inspector may examine upon oath or affirmation the officers and agents of the company in relation to its business, and may administer such oath or affirmation accordingly. Power of inspectors to examine officers.

If any such officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding one hundred rupees in respect of each offence. Penalty on officers for default.

**59.** Upon the conclusion of the examination, the inspectors shall report their opinions to the Local Government. Report of inspectors.

Such report shall be written or printed as the Local Government directs.

A copy shall be forwarded by the Local Government to the registered office of the company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them. Supply of copies.

All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Local Government shall direct the same to be paid out of the assets of the company, which the Local Government is hereby authorized to do. Defraying expense of examination.

Power of company to appoint inspectors.

**60.** Any company under this Act may, by a special resolution, appoint inspectors for the purpose of examining into the affairs of the company.

Powers and duties of inspectors.

The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Local Government, with this exception, that, instead of making their report to the Local Government, they shall make the same in such manner and to such persons as the company in general meeting directs.

Penalty on officers for default.

The officers and agents of the company shall incur the same penalties, in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspectors had been appointed by the Local Government.

Report of inspectors to be evidence.

**61.** A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report.

*Notices.*

Service of process on company;

**62.** Any summons, notice, order or other document required to be served upon the company, may be served by leaving the same, or sending it through the post by a registered letter addressed to the company, at their registered office;

and of notice on Registrar.

and any notice to the Registrar of Joint Stock Companies may be served by sending it to him through the post by a registered letter, or by delivering it to him, or by leaving it for him at his office.

Service by post.

**63.** Every document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof;

Proof of service.

and in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was put as a registered letter into the post-office.

Authentication of process by company.

**64.** Any summons, notice, order or proceeding requiring authentication by the company, may be signed by any director, secretary, or other authorized officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

*Legal Proceedings.*

Recording minutes of proceedings.

**65.** Every company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or

managers of the company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; at meetings.

and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings. Minutes to be evidence.

Until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had, to have been duly passed and had, and all appointments of directors, managers or liquidators shall be deemed to be valid, and all acts done by such directors, managers or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications. Validity of meetings; resolutions; appointments acts done.

66. Where a limited company is plaintiff in any suit, any Judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence, the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given. Power to stay proceedings in suits brought by limited companies until security for costs given.

67. In any suit brought by the company against any member to recover any call or other monies due from such member in his character of member, it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made or other monies due, whereby a suit has accrued to the company. Suits by company against members.

*Alteration of Forms.*

68. The forms set forth in the second schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer. Use of forms in schedule.

The Governor General of India in Council may from time to time make such alterations in the tables and forms contained in the first schedule hereto, so that he does not increase the amount of fees payable to the Registrar in the said schedule mentioned, and in the forms in the second schedule, or make such additions to the last-mentioned forms, as he deems requisite. Power to alter tables and forms.

Any such table or form, when altered, shall be published in the *Gazette of India*, and upon such publication being made, such table or form shall have the same force as if it were included in the schedule to this Act; Publication and effect of altered tables and forms.

but no alteration made by the Governor General of India in Council in the table marked A contained in the first schedule shall affect any company registered prior to the date of such alteration, or repeal, as respects such company, any portion of such table.

*Arbitrations.*

Reference of matters to arbitration.

69. Any company under this Act may from time to time, by writing under its common seal, agree to refer and may refer to arbitration any matter whatsoever in dispute between itself and any other company or person;

Delegation of powers to referees.

and the companies, parties to the arbitration, may delegate to the person or persons to whom the reference is made, power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by the directors or other managing body of such companies.

Power to alter or revoke agreements for reference.

70. The companies jointly, but not otherwise, from time to time, by writing under their respective common seals, may add to, alter or revoke any agreement for reference in accordance with this Act theretofore entered into between the companies, or any of the terms, conditions or stipulations thereof.

Agreements to be carried into effect.

71. Every reference or agreement in accordance with this Act, except so far as it is from time to time revoked or modified in accordance with this Act, shall bind the companies, and may and shall be carried into full effect.

Reference to sole arbitrator.

72. Where the companies agree, the reference shall be made to a single arbitrator.

Reference to two or more arbitrators.

73. Except where the companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows; to wit—

where there are two companies, the reference shall be made to two arbitrators:

where there are three or more companies, the reference shall be made to so many arbitrators as there are companies.

Appointment of arbitrators by companies.

74. Where there are to be two or more arbitrators, every company shall by writing under their common seal appoint one of the arbitrators, and shall give notice in writing thereof to the other company or companies.

Appointment of arbitrators by Local Government.

75. Where there are to be two or more arbitrators, if any of the companies fail to appoint an arbitrator within fourteen days after being thereunto requested in writing by the other company, or by the other companies or any of them, then, on the application of the companies or any of them, the Local Government, instead of the company so failing to appoint an arbitrator, may appoint an arbitrator.

The arbitrator so appointed shall for the purposes of this Act be deemed to be appointed by the company so failing.

76. When the reference is made to two or more arbitrators, if before the matters referred to them are determined any arbitrator dies, or becomes incapable or unfit, or for seven consecutive days fails, to act as arbitrator, the company by which he was appointed shall by writing under their common seal appoint an arbitrator in his place.

Appointment of arbitrators by companies to supply vacancies.

77. Where the company by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit or failing to act, fails to make the appointment within fourteen days after being thereunto requested in writing by the other company, or by the other companies or any of them, then, on the application of the companies or any of them, the Local Government may appoint an arbitrator.

Appointment of arbitrators by Local Government to supply vacancies.

The arbitrator so appointed shall for the purposes of this Act be deemed to be appointed by the company so failing.

78. When any appointment of an arbitrator is made, the company making the appointment shall have no power to revoke the same without the previous consent in writing of the other company or every other company in writing under their common seal.

Revocation of appointment of arbitrator.

79. Where two or more arbitrators are appointed, they shall, before entering on the business of the reference, appoint by writing under their hands an impartial and qualified person to be their umpire.

Appointment of umpire by arbitrators.

80. If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then, on the application of the companies or any of them, the Local Government may appoint an umpire; and the umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators.

Appointment of umpire by Local Government.

81. Where two or more arbitrators are appointed, if before the matters referred to them are determined their umpire dies, or becomes incapable or unfit, or for seven consecutive days fails, to act as umpire, the arbitrators shall by writing under their hands appoint an impartial and qualified person to be their umpire in his place.

Appointment of umpire by arbitrators to supply vacancy.

82. If the arbitrators fail to appoint an umpire within seven days after notice in writing to them of the decease, incapacity, unfitness or failure to act of their umpire, then, on the application of the companies or any of them, the Local Government may appoint an umpire.

Appointment of umpire by Local Government to supply vacancy.

The umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators so failing.

83. Every arbitrator appointed in the place of a preceding arbitrator, and every umpire appointed in the place of a preceding umpire, shall respectively have the like powers and authorities as his respective predecessor.

Powers of succeeding arbitrators and umpires.

Reference to umpire.

84. Where there are two or more arbitrators, if they do not within such a time as the companies agree on, or, failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

Power for arbitrators, &c., to call for books, &c., and administer oath.

85. The arbitrator and the arbitrators, and the umpire, respectively, may call for the production of any documents or evidence in the possession or power of the companies respectively, or which they respectively can produce, and which the arbitrator or the arbitrators, or the umpire, shall think necessary for determining the matters referred, and may examine the witnesses of the companies, respectively, on oath or affirmation, and may administer the requisite oath or affirmation.

Procedure in arbitration.

86. Except where and as the companies otherwise agree, the arbitrator and the arbitrators, and the umpire, respectively, may proceed in the business of the reference in such manner as he and they respectively shall think fit.

Arbitration may proceed in absence of companies.

87. The arbitrator and the arbitrators, and the umpire, respectively, may proceed in the absence of all or any of the companies in every case in which, after giving notice in that behalf to the companies respectively, the arbitrator or the arbitrators, or the umpire, shall think fit so to proceed.

Several awards may be made.

88. The arbitrator and the arbitrators, and the umpire, respectively, may, if he and they respectively think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred.

Force of awards.

Every such award on part of the matters shall, for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or, in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that notwithstanding the other matters or any of them be not then or thereafter awarded on.

Awards made in due time to bind all parties.

89. The award of the arbitrator or of the arbitrators, or of the umpire, if made in writing under his or their respective hand or hands and ready to be delivered to the companies within such a time as the companies agree on, or failing such agreement within thirty days next after the matters in difference are referred to (as the case may be) the arbitrator or the arbitrators, or the umpire, shall be binding and conclusive on all the companies.

Power for umpire to extend period for making his award.

90. Provided always that (except where and as the companies otherwise agree) the umpire, from time to time by writing under his hand, may extend the period within which his award is to be made.

If it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period. Effect of award made in extended time.

**91.** No award made on any arbitration in accordance with this Act shall be set aside for any irregularity or informality. Awards not set aside for informality.

**92.** Except only so far as the companies bound by any award in accordance with this Act from time to time otherwise agree, all things by every award in accordance with this Act lawfully required to be done, omitted or suffered, shall be done, omitted or suffered accordingly. Awards to be obeyed.

**93.** Full effect shall be given by the Courts according to their respective jurisdictions, and by the companies, respectively, and otherwise, to all agreements, references, arbitrations and awards in accordance with this Act; Agreements, arbitrations and awards to have effect.

and the performance or observance thereof may, where the Courts think fit, be compelled by any process against the companies respectively, or their respective property, that the Courts or any Judge thereof shall direct, and where requisite frame, for the purpose. Power to compel observance.

**94.** Except where and as the companies otherwise agree, the costs of and attending the arbitration and the award shall be in the discretion of the arbitrator and the arbitrators, and the umpire, respectively. Discretion as to costs of arbitration and award.

**95.** Except where and as the companies otherwise agree, and if and so far as the award does not otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the companies in equal shares, and in other respects the companies shall bear their own respective costs. Costs by whom borne.

**96.** On the application of any party interested, the submission to any such arbitration may be filed in the High Court, and an order of reference may be made thereon, with any directions the Court thinks fit; Submission to arbitration may be filed in Court.

and the provisions of the Code of Civil Procedure shall, so far as the same are applicable, apply to every such order and to all proceedings thereunder. Civil Procedure Code applied.

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## PART IV.

### Winding-up of Companies and Associations under this Act.

*Preliminary.*

**97.** The term "contributory" shall mean every person liable to contribute to the assets of a company under this Act in the event of the same being wound up; it shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory. Meaning of contributory.

Nature of liability of contributory.

**98.** The liability of any person to contribute to the assets of a company under this Act in the event of the same being wound up, shall be deemed to create a debt accruing due from such person at the time when his liability commenced, but payable at the time, or respective times, when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful, in the case of the insolvency of any contributory, to prove against his estate the estimated value of his liability to future calls, as well as calls already made.

Liability of estate of insolvent contributory.

Liability of representatives of deceased contributories.

**99.** If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs and devisees shall be liable in a due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory, and such personal representatives, heirs and devisees shall be deemed to be contributories accordingly.

Liability of assignees of insolvent contributories.

**100.** If any contributory becomes insolvent, either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such insolvent for all the purposes of the winding-up, and shall be deemed to be contributories accordingly, and may be called upon to admit to prove against the estate of such insolvent, or otherwise to allow to be paid out of his assets in due course of law, any monies due from such insolvent in respect of his liability to contribute to the assets of the company being wound up.[a]

*Winding-up by Court.*

Circumstances under which company may be wound up by Court.

**101.** A company under this Act may be wound up by the Court as hereinafter defined, under the following circumstances; (that is to say)—

(1.) whenever the company has passed a special resolution requiring the company to be wound up by the Court:

(2.) whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year:

(3.) whenever the members are reduced in number to less than seven:

(4.) whenever the company is unable to pay its debts:

(5.) whenever the Court is of opinion that it is just and equitable that the company should be wound up.

Company when deemed unable to pay its debts.

**102.** A company under this Act shall be deemed to be unable to pay its debts—

(1.) whenever a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served

[a] *Bábá Sáheb Dámáskar's case*, 8 Bomb., O. C. J., 127.

on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor:

(2.) whenever execution or other process issued on a decree or order obtained in any Court in favour of any creditor, in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part:

(3.) whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts.

Definition of "the Court."

**103.** The expression "the Court," as used in this Part of this Act, shall mean the principal Court having original civil jurisdiction in the place in which the registered office of the company is situate; unless in the regulations for the management of the company it shall be stipulated that the company if wound up shall be wound up by the High Court of Judicature at Fort William, Madras or Bombay (as the case may be), or by the Chief Court of the Panjáb, in which case the word "Court" shall mean the said High Court or Chief Court (as the case may be) in the exercise of its original civil jurisdiction.

Form and presentation of application for winding-up.

**104.** Any application to the Court for the winding-up of a company under this Act shall be by petition, which may be presented by the company, or by any one or more creditor or creditors, contributory or contributories, of the company, or by all or any of the above parties, together or separately.

Effect of order on application.

Every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the company, in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

Commencement of winding-up by Court.

**105.** A winding-up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

Court may grant injunction.

**106.** The Court may, at any time after the presentation of a petition for winding-up a company under this Act and before making an order for winding-up the company, upon the application of the company or of any creditor or contributory of the company, restrain further proceedings in any suit or proceeding against the company, upon such terms as the Court thinks fit.

And appoint official liquidator.

The Court may also, at any time after the presentation of such petition and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the company.

Powers of Court on hearing petition.

**107.** Upon hearing the petition, the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order or any other order that it deems just.

Prosecution of suits after order for winding-up.

**108.** When an order has been made for winding-up a company under this Act, no suit or other proceeding[a] shall be proceeded with or commenced against the company, except with the leave of the Court and subject to such terms as the Court may impose.

Copy of order to be forwarded to Registrar.

**109.** When an order has been made for winding-up a company under this Act, a copy of such order shall forthwith be forwarded by the company to the Registrar of Joint Stock Companies; who shall make a minute thereof in his books relating to the company.

Power of Court to stay proceedings.

**110.** The Court may at any time after an order has been made for winding-up a company, upon the application of any creditor or contributory of the company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

Effect of order on share-capital of company limited by guarantee.

**111.** When an order has been made for winding-up a company limited by guarantee and having a capital divided into shares, any share-capital that may not have been called up shall be deemed to be assets of the company and to be a debt due to the company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.

Court may regard wishes of creditors or contributories;

**112.** The Court may, as to all matters relating to the winding-up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence,

direct meetings;

and may, if it thinks it expedient, direct meetings of the creditors or contributories to be summoned, held and conducted in such manner as the Court directs, for the purpose of ascertaining their wishes,

and appoint chairman.

and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

In the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories, to the number of votes conferred on each contributory by the regulations of the company.

*Official Liquidators.*

Official liquidators may be appointed

**113.** For the purpose of conducting the proceedings in winding-up a company and assisting the Court therein, there may be appointed a person or persons to be called an official liquidator or official liquidators.

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[a] 3 Bomb., O. C. J., 20.

The Court may appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators. provisionally or otherwise.

In all cases, if more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act hereby required or authorized to be done by the official liquidator is to be done, by all or any one or more of such persons. Court to declare by whom necessary acts to be done.

The Court may also determine whether any and what security is to be given by any official liquidator on his appointment. Security.

If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the Court. Custody of property.

**114.** Any official liquidator may resign or be removed by the Court on due cause shown. Resignation and removal.

Any vacancy in the office of an official liquidator appointed by the Court shall be filled by the Court. Filling up vacancies.

There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs. Remuneration.

**115.** The official liquidator or liquidators shall be described by the style of the official liquidator or official liquidators of the particular company in respect of which he is or they are appointed, and not by his or their individual name or names. Style of official liquidator.

He or they shall take into his or their custody, or under his or their control, all the property, effects and things in action to which the company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the company as may be imposed by the Court. Duties.

**116.** The official liquidator shall have power, with the sanction of the Court, to do the following things :— Powers of official liquidator as to—

(1.) to bring or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company : suits and prosecutions;

(2.) to carry on the business of the company, so far as may be necessary for the beneficial winding-up of the same : carrying on business;

(3.) to sell the immoveable and moveable property, effects and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels : sale and transfer of property;

(4.) to do all acts, and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal : execution of deeds;

Insolvent contributories;

(5.) to prove, rank, claim and draw a dividend, in the matter of the insolvency of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of the insolvency, as a separate debt due from such insolvent, and rateably with the other separate creditors :

bills of exchange, &c.; raising funds.

(6.) to draw, accept, make and endorse any bill of exchange, hundí or promissory note in the name and on behalf of the company, also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting, making or endorsing of every such bill of exchange, hundí or promissory note as aforesaid on behalf of the company, shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of such company in the course of carrying on the business thereof :

Effect of drawing, acceptance, &c.

Deceased contributories.

(7.) to take out, if necessary, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act that may be necessary for obtaining payment of any monies due from a contributory or from his estate, and which act cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any monies due from a contributory, such monies shall, for the purpose of enabling him to take out such letters or recover such monies, be deemed to be due to the official liquidator himself :

Saving of rights of Administrators General.

Provided that nothing herein contained shall be deemed to affect the rights, duties and privileges of the Administrators General and officiating Administrators General of Bengal, Madras and Bombay respectively : [a]

Winding-up and distribution.

(8.) to do and execute all such other things as may be necessary for winding-up the affairs of the company and distributing its assets.

Discretion of official liquidator.

**117.** The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

Appointment of attorney or vakíl to official liquidator.

**118.** The official liquidator may, with the sanction of the Court, appoint an attorney or vakíl to assist him in the performance of his duties.

*Ordinary Powers of Court.*

Settlement of list of contributories.

**119.** As soon as may be after making an order for winding-up the company, the Court shall settle a list of contributories, with power to rectify the

[a] See, now, Act No. 11 of 1874.

register of members in all cases where such rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

Rectification of register of members. Collection and application of assets.

**120.** In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right, and persons who are contributories as being representatives of or being liable to the debts of others.

Distinction of direct and representative contributories.

**121.** The Court may, at any time after making an order for winding-up a company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker or agent, or officer of the company to pay, deliver, convey, surrender or transfer, forthwith or within such time as the Court directs, to or into the hands of the official liquidator any sum or balance, books, papers, estate or effects which happen to be in his hands for the time being, and to which the company is *primâ facie* entitled.

Power of Court to require delivery of property.

**122.** The Court may, at any time after making an order for winding-up the company, make an order on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned, of any monies due from him or from the estate of the person whom he represents to the company, exclusive of any monies which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this Part of this Act.

Power of Court to order payment of debts by contributory;

The Court may, in making such order, when the company is not limited, allow to such contributory by way of set-off any monies due to him or the estate which he represents from the company, on any independent dealing or contract with the company, but not any monies due to him as a member of the company in respect of any dividend or profits.

and to allow set-off.

Provided that when all the creditors of any company, whether limited or unlimited, are paid in full, any monies due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls.

Set-off against subsequent calls.

**123.** The Court may, at any time after making an order for winding-up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves.

Power of Court to make calls.

Regard to probable default by some contributories.

The Court may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

Power of Court to order payment into bank.

**124.** The Court may order any contributory, purchaser or other person from whom money is due to the company, to pay the same into the bank of Bengal, the bank of Madras or the bank of Bombay, as the case may be, or any branch thereof respectively, to the account of the official liquidator instead of to the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Regulation of account with Court.

**125.** All monies, bills, notes and other securities, paid and delivered into the bank of Bengal, the bank of Madras or the bank of Bombay, or any branch thereof respectively, in the event of a company being wound up by the Court, shall be subject to such order and regulation for the keeping of the account of such monies and other effects, and for the payment and delivery in, or investment and payment and delivery out, of the same, as the Court may direct.

Administration of property of deceased contributory on default by representative.

**126.** If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the property of such deceased contributory, whether moveable or immoveable, or both, and of compelling payment thereout of the monies due.

Effect of order of Court on contributory.

**127.** Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the monies, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons and in all proceedings whatsoever.

Court may exclude creditors not proving within certain time.

**128.** The Court may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

Court to adjust rights of contributories.

**129.** The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

Power to make order as to payment of costs.

**130.** The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges and expenses incurred in winding-up any company in such order of priority as the Court thinks just.

Dissolution of company.

**131.** When the affairs of the company have been completely wound up, the Court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

**132.** Any order so made shall be reported by the official liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such company.

Registrar to make minute of dissolution.

**133.** If the official liquidator makes default in reporting to the Registrar, in the case of a company being wound up by the Court, the order that the company be dissolved, he shall be liable to a penalty not exceeding one hundred rupees for every day during which he is so in default.

Penalty on not reporting dissolution.

*Extraordinary Powers of Court.*

**134.** The Court may, after it has made an order for winding-up the company, summon before it any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate or effects of the company.

Power to summon persons suspected of having property of company.

The Court may require any such officer or person to produce any documents in his custody or power relating to the company.

Production of documents.

If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting and allowed by it), the Court may cause such person to be apprehended and brought before the Court for examination.

Apprehension of person refusing.

Nevertheless, in cases where any person claims any lien on documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

Lien on documents produced.

**135.** The Court may examine upon oath or affirmation, either by word of mouth or upon written interrogatories, any person appearing or brought before it in manner aforesaid, concerning the affairs, dealings, estate or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

Examination of parties by Court.

**136.** The Court may, at any time before or after it has made an order for winding-up a company, upon proof being given that there is probable cause for believing that any contributory to such company is about to quit British India or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his bo oks, papers, monies, securities for monies, goods and chattels to be seized, and him and them to be safely kept until such time as the Court may order.

Power to arrest contributory about to abscond or to remove or conceal property.

Powers of Court cumulative.

**137.** Any powers by this Act conferred on the Court shall be deemed to be in addition to, and not in restriction of, any other powers subsisting of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company, for the recovery of any call or other sums due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly.

*Enforcement of and Appeal from Orders.*

Enforcement of orders.

**138.** All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

Order of one Court to be enforced by others.

**139.** Any order made by a Court for or in the course of the winding-up of a company under this Act shall be enforced in any part of British India other than that in which such Court is situate, in the Court that would have had jurisdiction in respect of such company if the registered office of the company had been situate in such other part, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same.

Procedure in respect of orders of one Court to be enforced by others.

**140.** Where any order or decree made by one Court is required to be enforced by another Court as hereinbefore provided, a certified copy of the order or decree so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order or decree having been made, and thereupon such last-mentioned Court shall take such steps in the matter as may be requisite for enforcing such order or decree, in the same manner as if it were the order or decree of the Court enforcing the same.

Re-hearings and appeals.

**141.** Re-hearings of and appeals from any order or decision made or given in the matter of the winding-up of a company by the Court, may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction; subject to this restriction, that no such re-hearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made, in manner in which notices of appeal are ordinarily given under the Code of Civil Procedure, unless such time is extended by the Court of appeal.

Notice to be given.

Judicial notice of signature of officers and seal of Court.

**142.** In all proceedings under this Part of this Act, every Court, Judge and person judicially acting, and all other officers, judicial or ministerial, of any Court, or employed in enforcing the process of any Court, shall take judicial notice of the signature of any officer of any other Court, and also of

the official seal of any other Court when such seal is appended to any document made, issued or signed under the provisions of this Part of the Act, or any official copy thereof.

**143.** The Judges of the district Courts who sit at places more than twenty English miles from the usual place of sitting of the High Court, shall be commissioners for the purpose of taking evidence under this Act in cases where any company is wound up in a High Court, and it shall be lawful for the High Court to refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner, although such commissioner is out of the jurisdiction of the Court that made the order or decree for winding-up the company.

Special commissioners for receiving evidence.

Power to refer examinations to them.

Every such commissioner shall, in addition to any power of summoning and examining witnesses, and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses, which he might lawfully exercise as a Judge of a district Court, have, in the matter so referred to him, all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the Court which made the order for winding-up the company has;

Powers of commissioners.

and the examination so taken shall be returned or reported to such last-mentioned Court in such manner as it directs.

Return of examinations.

**144.** If any affidavit, affirmation or declaration required to be sworn or made under the provisions or for the purposes of this Part of this Act, be lawfully sworn or made in British India, or in Great Britain or Ireland, or in any colony, island, plantation or place under the dominion of Her Majesty in foreign parts, before any Court, Judge or person lawfully authorized to take and receive affidavits, affirmations or declarations, or before any of Her Majesty's consuls or vice-consuls in any foreign parts out of Her Majesty's dominions, all Courts, Judges, Justices, commissioners and persons acting judicially in British India shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, consul or vice-consul, attached, appended or subscribed to any such affidavit, affirmation or declaration, or to any other document to be used for the purposes of this Part of this Act.

Judicial notice of seal, &c., on affidavits, &c., sworn in British India, Great Britain or Ireland, or abroad.

*Voluntary Winding-up of Company.*

**145.** A company under this Act may be wound up voluntarily,

Circumstances under which company may be wound up voluntarily.

(1.) whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs upon the occurrence of which it is provided by the articles of association that

the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily :

(2.) whenever the company has passed a special resolution requiring the company to be wound up voluntarily :

(3.) whenever the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same :

Extraordinary resolution.

For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution as hereinbefore defined.

Commencement of voluntary winding-up.

**146.** A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorizing such winding-up.

Effect of voluntary winding-up on status of Company.

**147.** Whenever a company is wound up voluntarily, the company shall, from the date of the commencement of such winding-up, cease to carry on its business except in so far as may be required for the beneficial winding-up thereof;

and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company, taking place after the commencement of such winding-up, shall be void, but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound up.

Notice of resolution to wind-up voluntarily.

**148.** Notice of any special resolution or extraordinary resolution passed for winding-up a company voluntarily shall be given by advertisement in the local official Gazette and also in some newspaper (if any) circulating in the place where the registered office of the company is situate.

Consequences of voluntary winding-up.

**149.** The following consequences shall ensue upon the voluntary winding-up of a company :—

(1.) the property of the company shall be applied in satisfaction of its liabilities *pari passu*, and subject thereto shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company :

(2.) liquidators shall be appointed for the purpose of winding-up the affairs of the company and distributing the property :

(3.) the company in general meeting shall appoint such persons or person as it thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or him :

(4.) if one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him:

(5.) upon the appointment of liquidators, all the powers of the directors shall cease, except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers:

(6.) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two:

(7.) the liquidators may, without the sanction of the Court, exercise all powers by this Act given to the official liquidators:

(8.) the liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the company, and any list so settled shall be *primâ facie* evidence of the liability of the persons named therein to be contributories:

(9.) the liquidators may at any time after the passing of the resolution for winding-up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may, in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same:

(10.) the liquidators shall pay the debts of the company, and adjust the rights of the contributories amongst themselves.

Effect of winding-up on share-capital of company limited by guarantee.

**150.** Where a company limited by guarantee and having a capital divided into shares is being wound up voluntarily, any share-capital that may not have been called up shall be deemed to be assets of the company, and to be a debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

Power of company to delegate authority to appoint liquidators.

**151.** A company about to be wound up voluntarily or in the course of being wound up voluntarily may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may by a like resolution enter into any arrangement with

respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised.

Acts done in pursuance.

Any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the company.

Arrangement when binding on company and creditors.

**152.** Any arrangement which a company about to be wound up voluntarily or in the course of being wound up voluntarily shall have entered into with its creditors, shall be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

Power of creditor or contributory to appeal.

**153.** Any creditor or contributory of a company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary or confirm the same.

Determination of questions and exercise of powers by Court on application of liquidators or contributories.

**154.** Where a company is being wound up voluntarily, the liquidators or any contributory of the company may apply to the Court to determine any question arising in the matter of such winding-up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

The Court, if satisfied that the determination of such question or the required exercise of power will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order or decree on such application as the Court thinks just.

Power of liquidators to call general meeting.

**155.** Where a company is being wound up voluntarily, the liquidators may, from time to time during the continuance of such winding-up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution, or for any other purposes they think fit.

General meeting to receive account and conduct of winding-up.

In the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings and the manner in which the winding-up has been conducted during the preceding year.

General meeting to fill up

**156.** If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation or otherwise, the company in general meeting

may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the company, be determined by the Court.

vacancy in office of liquidators.

**157.** If from any cause whatever there is no liquidator acting in the case of a voluntary winding-up, the Court may, on the application of a contributory, appoint a liquidator or liquidators.

Appointment of liquidator by Court.

The Court may also, on due cause shown, remove any liquidator, and appoint another liquidator to act in the matter of a voluntary winding-up.

Removal and replacement.

**158.** As soon as the affairs of the company are fully wound up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted and the property of the company disposed of;

Account on conclusion of winding-up.

and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators.

General meeting to receive it.

The meeting shall be called by advertisement, specifying the time, place and object of such meeting, and such advertisement shall be published one month at least previously to the meeting, in the manner specified in section 148.

Calling of meeting.

**159.** The liquidators shall make a return to the Registrar of such meeting having been held, and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return, the company shall be deemed to be dissolved.

Liquidators to report meeting to Registrar.

Dissolution.

If the liquidators make default in making such return to the Registrar, they shall incur a penalty not exceeding fifty rupees for every day during which such default continues.

Penalty for not reporting.

**160.** All costs, charges and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

Payment of costs of voluntary liquidation.

**161.** The voluntary winding-up of a company shall not be a bar to the right of any creditor of such company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

Saving of rights of creditors.

Power of Court to adopt proceedings of voluntary winding-up.

**162.** Where a company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound up by the Court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

*Winding-up subject to the Supervision of the Court.*

Power of Court, on application, to direct winding-up subject to supervision.

**163.** When a resolution has been passed by a company to wind-up voluntarily, the Court may make an order directing that the voluntary winding-up should continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally upon such terms and subject to such conditions, as the Court thinks just.

Petition for winding-up subject to supervision.

**164.** A petition praying wholly or in part that a voluntary winding-up should continue, but subject to the supervision of the Court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding-up the company by the Court.

Court may have regard to wishes of creditors and contributories;

**165.** The Court may, in determining whether a company is to be wound up altogether by the Court or subject to the supervision of the Court, in the appointment of a liquidator or of liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence,

direct meetings,

and appoint chairman.

and may direct meetings of the creditors or contributories to be summoned, held and regulated in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

In the case of creditors, regard shall be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

Power to Court to appoint additional liquidators.

**166.** Where any order is made by the Court for a winding-up subject to the supervision of the Court, the Court may, in such order or in any subsequent order, appoint any additional liquidator or liquidators.

Powers of such liquidators.

Any liquidators so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the company.

Removal and replacement.

The Court may from time to time remove any liquidators so appointed by the Court, and fill up any vacancy occasioned by such removal, or by death or resignation.

**167.** Where an order is made for a winding-up subject to the supervision of the Court, the liquidators appointed to conduct such winding-up may, subject to any restrictions imposed by the Court, exercise all their powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily.

Effect of order of Court for winding-up subject to supervision.

Save as aforesaid, any order made by the Court for a winding-up subject to the supervision of the Court, shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for winding-up the company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding-up the company altogether by the Court.

In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression official liquidators shall be deemed to mean the liquidators conducting the winding-up subject to the supervision of the Court.

Meaning of official liquidator.

**168.** Where an order has been made for the winding-up of a company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the company to be wound up compulsorily, the Court may, in such last-mentioned order or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other persons, to be official liquidators.

Appointment of voluntary liquidators to office of official liquidators.

*Supplemental Provisions.*

**169.** Where any company is being wound up by the Court or subject to the supervision of the Court, all dispositions of the property, effects and things in action of the company, and every transfer of shares or alteration in the status of the members of the company, made between the commencement of the winding-up and the order for winding-up, shall, unless the Court otherwise orders, be void.

Avoiding of dispositions after commencement of winding-up.

**170.** Where any company is being wound up, all books, accounts and documents of the company and of the liquidators shall, as between the contributories of the company, be *primâ facie* evidence of the truth of all matters purporting to be therein recorded.

Books of company to be evidence.

**171.** Where any company has been wound up under this Act and is about to be dissolved, the books, accounts and documents of the company and of the liquidators may be disposed of in the following way ; that is to say,

Disposal of books, accounts and documents of company.

where the company has been wound up by or subject to the supervision of the Court, in such way as the Court directs, and

where the company has been wound up voluntarily, in such way as the company by an extraordinary resolution directs.

Responsibility therefor.

But after the lapse of five years from the date of such dissolution, no responsibility shall rest on the company or the liquidators, or any one to whom the custody of such books, accounts and documents has been committed, by reason that the same or any of them cannot be made forthcoming to any party or parties claiming to be interested therein.

Inspection of books.

**172.** Where an order has been made for winding-up a company by the Court or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise.

General scheme of liquidation may be sanctioned.

**173.** The liquidators may, with the sanction of the Court, where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company, where the company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, whereby the company may be rendered liable.[a]

Power to compromise.

**174.** The liquidators may, with the sanction of the Court, where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company, where the company is being wound up altogether voluntarily, compromise[a] all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, whether present or future, subsisting or supposed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding-up of the company, generally upon such terms as may be agreed upon, with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts or liabilities.

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[a] *Bank of Hindustan, &c.,* v. *Eastern Financial Association,* 13 Moore, I. A. 15: S. C. 3 Beng., P. C., 8.

**175.** Where any company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first-mentioned company may, with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale, shares, debentures, policies or other like interests in such other company, for the purpose of distribution amongst the members of the company being wound up,

Power for liquidators to accept shares, &c., as consideration for sale of property of company,

or may enter into any other arrangement whereby the members of the company being wound up may, in lieu of receiving cash, shares, debentures, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company ;

or arrange for participation in profits of purchasing company.

and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up ; subject to this proviso that, if any member of the company being wound up, who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer ; that is to say, either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase-money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution.

Right of dissentient member.

No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding-up the company, or for appointing liquidators ;

Validity of special resolution.

but if an order be made within a year for winding-up the company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

**176.** The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement.

Determining price of interest of dissentient.

If the parties dispute about the same, such dispute shall be settled by arbitration under the provisions next hereinafter contained.

Appointment of arbitrator when questions to be determined by arbitration.

**177.** When any dispute so directed to be settled by arbitration shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall by writing under his hand nominate and appoint an arbitrator to whom such dispute shall be referred.

Revocation.

After any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation.

Appointment of sole arbitrator by one party when other fails.

If for the space of fourteen days after any such dispute shall have arisen, and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and in such case the award or determination of such single arbitrator shall be final.

Award.

Appointment of arbitrator to fill vacancy.

**178.** If before the matters so referred shall be determined, any arbitrator appointed by either party die, or become incapable or refuse, or for seven days neglect, to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place;

Proceeding *ex parte* by remaining arbitrator.

and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed *ex parte*:

Powers of substituted arbitrator.

and every arbitrator so substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal or disability as aforesaid.

Appointment of umpire.

**179.** Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ.

Replacement of umpire dying, &c.

Decision.

If such umpire shall die, or refuse or for seven days neglect to act, they shall forthwith, after such death, refusal or neglect, appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

Power of arbitrators to call for books, &c.

**180.** The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

**181.** The costs of and attending every such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators or their umpires, as the case may be.

Discretion as to costs.

**182.** On the application of either of the parties the submission to any such arbitration may be filed in the Court, and an order of reference may be made thereon; and the provisions of the Code of Civil Procedure shall, so far as the same are applicable, apply to every such order and to all proceedings thereunder.

Filing of submission to arbitration.

Civil Procedure Code applied.

**183.** Where any company is being wound up by the Court or subject to the supervision of the Court, any attachment, distress or execution put in force against the estate or effects of the company after the commencement of the winding-up shall be void.

Certain attachments, distresses and executions void.

**184.** Every conveyance, mortgage, delivery of goods, payment, execution or other act relating to property, which would, if made or done by or against any individual trader, be deemed in the event of his insolvency to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any company, be deemed, in the event of such company being wound up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such company, and shall be invalid accordingly.

Fraudulent preference.

For the purposes of this section, the making of an application for winding-up a company shall, in the case of a company being wound up by the Court or subject to the supervision of the Court, and a resolution for winding-up the company shall, in the case of a voluntary winding-up, be deemed to correspond with the act of insolvency in the case of an individual trader;

Application or resolution for winding-up equivalent to act of insolvency.

and any conveyance or assignment made by any company formed under this Act, of all its estate and effects to trustees for the benefit of all its creditors, shall be void.

Assignment to trustees for creditors void.

**185.** Where in the course of the winding-up of any company under this Act, it appears that any past or present director, manager, official or other liquidator, or any officer of such company, has misapplied or retained in his own hands or become liable or accountable for any monies of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator, or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager or other officer, and compel him to repay any monies so misapplied or retained, or for which he has become liable or accountable,

Power of Court to assess damages against delinquent directors and officers.

together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance or breach of trust, as the Court thinks just.

Penalty for destroying or falsifying books.

**186.** If any director, officer or contributory of any company wound up under this Act, destroys, mutilates, alters, falsifies or fraudulently secretes any books, papers, writings or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or other document belonging to the company, with intent to defraud or deceive any person, every person so offending shall be punished with imprisonment of either description as defined in the Indian Penal Code, for a term which may extend to two years, and shall also be liable to fine which may extend to five hundred rupees.

Prosecution of delinquent directors in winding-up by Court.

**187.** Where any order is made for winding-up a company by the Court or subject to the supervision of the Court, if it appear in the course of such winding-up that any past or present director, manager, officer or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in such winding-up or of its own motion, direct the official liquidators, or the liquidators (as the case may be), to institute a prosecution for such offence, and may order the costs and expenses of such prosecution to be paid out of the assets of the company.

Penalty of false evidence.

**188.** If any person, upon any examination upon oath or affirmation authorized under this Act, or in any affidavit, deposition or solemn affirmation in or about the winding-up of any company under this Act, or otherwise in or about any matter arising under this Act, intentionally gives false evidence, he shall, upon conviction, be liable to imprisonment of either description as defined in the Indian Penal Code for a term which may extend to seven years and shall also be liable to fine.

*Power of High Court to make Rules.*

Power of High Court to make rules.

**189.** The High Court may make such rules concerning the mode of proceeding to be had for winding-up a company in such Court and in the Courts subordinate thereto, as may from time to time seem necessary and as may be consistent with the other provisions of this Act and with the Code of Civil Procedure.

Practice to apply till rules made.

But until such rules are made, the general practice of the Court including the practice hitherto in use in winding-up companies shall, so far as the same is applicable and not inconsistent with this Act, apply to all proceedings for winding-up a company.

## PART V.

### Registration Office.

**190.** The registration of companies under this Act shall be conducted as follows; (that is to say)— Registration of companies.

(1) The Local Government may, after the sanction of the Governor General of India in Council to the creation of any such offices shall have been obtained, from time to time appoint such registrars, assistant-registrars, clerks and servants as it may think necessary for the registration of companies under this Act, and remove them at pleasure: Power to appoint and remove officers:

(2.) The Local Government may make such regulations as it thinks fit with respect to the duties to be performed by any such registrars, assistant-registrars, clerks and servants as aforesaid: to regulate their duties:

(3.) The Local Government may from time to time determine the places at which offices for the registration of companies are to be established, so that there be at all times maintained in each of the three presidency-towns of Calcutta, Madras and Bombay at least one such office, and that no company shall be registered except at an office within that part of British India in which by the memorandum of association the registered office of the company is declared to be established: to determine places where offices to be established:

(4.) The Local Government may from time to time direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of companies: to direct use of seal.

(5.) Every person may inspect the documents kept by the Registrar of Joint Stock Companies. Inspection of documents.

There shall be paid for such inspection such fees as may be appointed by the Local Government not exceeding one rupee for each inspection. Fees.

Any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar. Certificate of incorporation.

There shall be paid for such certificate of incorporation, certified copy or extract, such fees as the Local Government may appoint, not exceeding three rupees for the certificate of incorporation, and not exceeding two annas for each hundred words of such copy or extract: Fees.

(6.) The existing registrar, assistant-registrars, clerks and other officers and servants in the office for the registration of joint stock companies shall, during the pleasure of the Local Government, hold the offices and receive the salaries hitherto held and received by them, but they shall in the execution of their duties conform to any regulations that may be issued by the Local Government: Continuance of existing officers.

Salaries of officers.

(7.) There shall be paid to any registrar, assistant-registrar, clerk or servant that may hereafter be employed in the registration of joint stock companies, such salary as the Local Government may, with the sanction of the Governor General of India in Council, direct :

Doing of acts required by Act to be done to or by Registrar.

(8.) Whenever any act is herein directed to be done to or by the Registrar of Joint Stock Companies, such act shall, until the Local Government otherwise directs, be done to or by the existing Registrar of Joint Stock Companies, or in his absence to or by such person as the Local Government may for the time being authorize. But in the event of the Local Government altering the constitution of the existing registry-office, such act shall be done to or by such officer or officers, and at such place or places with reference to the local situation of the registered offices of the companies to be registered, as the Local Government may appoint.

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## PART VI.

### Application of Act to Companies registered under the Joint Stock Companies' Acts.

Application of Act to companies formed and registered under Act XIX of 1857 or VII of 1860.

**191.** Subject as hereinafter mentioned, this Act, with the exception of table A in the first schedule, shall apply to companies formed and registered under Act No. XIX of 1857 and Act No. VII of 1860 or either of them, in the same manner in the case of a limited company as if such company had been formed and registered under this Act as a company limited by shares ; and in the case of a company other than a limited company, as if such company had been formed and registered as an unlimited company under this Act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such companies were respectively registered under the said Acts or either of them,

Power of altering regulations by special resolution.

and the power of altering regulations by special resolution given by this Act shall, in the case of any company formed and registered under the said Acts or either of them, extend to altering any provisions contained in the table marked B annexed to Act No. XIX of 1857, and shall also, in the case of an unlimited company formed and registered as last aforesaid, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding such regulations are contained in the memorandum of association.

Application of Act to companies registered

**192.** This Act shall apply to companies registered but not formed under the said Acts or either of them, in the same manner as it is hereinafter declared

to apply to companies registered but not formed under this Act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such companies were respectively registered under the said Acts or either of them.

but not formed under Act XIX of 1857 or VII of 1860.

**193.** Any company registered under the said Acts or either of them may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

Transfer of shares.

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## PART VII.

### COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

**194.** With the exceptions made in the next following section and subject to the regulations therein contained, every company existing at the time of the commencement of this Act, including any company registered under either of the said Acts, consisting of seven or more members, and any company hereafter formed in pursuance of any Act of Parliament, or Act of the Governor General of India in Council other than this Act, or of Letters Patent, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this Act as an unlimited company, or a company limited by shares, or a company limited by guarantee,

Companies capable of being registered.

and no such registration shall be invalid by reason that it has taken place with a view to the company being wound up.

Registration for winding-up.

**195.** The following regulations shall be observed with respect to the registration of companies under this Part of this Act : (that is to say)—

Regulations as to registration under Part VII.

(1.) no company having the liability of its members limited by Act of Parliament or Act of the Governor General of India in Council other than this Act, or by Letters Patent, and not being a joint stock company as hereinafter defined, shall register under this Act in pursuance of this Part thereof :

Companies which cannot register.

(2.) no company having the liability of its members limited by Act of Parliament or Act of the Governor General of India in Council other than this Act, or by Letters Patent, shall register under this Act in pursuance of this Part thereof as an unlimited company, or as a company limited by guarantee :

Companies which cannot register as unlimited or limited by guarantee.

(3.) no life-assurance company existing at the time of the commencement of this Act, and no company that is not a joint stock company as hereinafter defined, shall in pursuance of this Part of this Act register under this Act as a company limited by shares :

Companies which cannot register as limited by shares.

(4.) no company shall register under this Act in pursuance of this Part thereof unless an assent to its so registering is given by a majority of such of its members as may be present, personally or by proxy in cases where proxies

Assent required in all cases.

are allowed by the regulations of the company, at some general meeting summoned for the purpose:

Assent in case of company not limited desiring to register as limited.

(5.) where a company not having the liability of its members limited by Act of Parliament or Act of the Governor General of India in Council, or by Letters Patent, is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present, personally or by proxy, at such last-mentioned general meeting:

Resolution to accompany assent in case of company registering as limited by guarantee.

(6.) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member, and of the costs, charges and expenses of winding-up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding a specified amount.

Computing majority.

In computing any majority under this section, when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company of which he is a member.

Definition of Joint Stock Company.

**196.** For the purposes of this Part of this Act, so far as the same relates to the description of companies empowered to register as companies limited by shares, a Joint Stock Company shall be deemed to be a company having a permanent paid-up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

Documents to be delivered before registration of joint stock companies.

**197.** Previously to the registration, in pursuance of this Part of this Act, of any joint stock company, there shall be delivered to the Registrar the following documents: (that is to say),

(1.) a list showing the names, addresses and occupations of all persons who, on a day named in such list and not being more than six clear days before the day of registration, were members of such company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number:

(2.) a copy of any Act of Parliament or Act of the Governor General of India in Council, Royal Charter, Letters Patent, deed of settlement, contract of copartnery or other instrument constituting or regulating the Company:

(3.) if any such joint stock company is intended to be registered as a limited company, the above list and copy shall be accompanied by a statement specifying the following particulars; (that is to say)—

the nominal capital of the company and the number of shares into which it is divided:

the number of shares taken and the amount paid on each share:

the name of the company, with the addition of the word "Limited" as the last word thereof:

with the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of the guarantee.

**Documents to be delivered before registration of company not with joint stock.**

**198.** Previously to the registration in pursuance of this Part of this Act of any company not being a joint stock company, there shall be delivered to the Registrar a list showing the names, addresses and occupations of the directors or other managers (if any) of the company, also a copy of any Act of Parliament, Act of the Governor General of India in Council, Letters Patent, deed of settlement, contract of copartnery or other instrument constituting or regulating the company, with the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of guarantee.

**Document to be delivered by company with capital converted into stock.**

**199.** Where a joint stock company authorized to register under this Act has had the whole or any portion of its capital converted into stock, such company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar a statement of the amount of stock belonging to the company, and the names of the persons who were holders of such stock, on some day to be named in the statement not more than six clear days before the day of registration.

**Verification of statements.**

**200.** The lists of members and directors and any other particulars relating to the company hereby required to be delivered to the Registrar, shall be verified by declaration of the directors of the company delivering the same or any two of them, or of any two other principal officers of the company made before a Justice of the Peace or a District Judge.

**Registrar may require evidence as to nature of company.**

**201.** The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or not a joint stock company as hereinbefore defined.

Notice to customers before registration of banking company with limited liability.

**202.** Every banking company existing at the date of the passing of this Act which registers itself as a limited company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership-firm having a banking account with the company.

Service of notice.

Such notice shall be given either by delivering the same to such person or firm, or leaving the same, or putting the same into the post addressed to him or them, at such address as shall have been last communicated or otherwise become known as his or their address to or by the company.

Effect of omission to give notice.

In case the company omits to give any such notice as is hereinbefore required to be given, then, as between the company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Companies exempted from payment of fees.

**203.** No fees shall be charged in respect of the registration in pursuance of this Part of this Act of any company in cases where such company is not registered as a limited company, or where, previously to its being registered as a limited company, the liability of the shareholders was limited by some Act of Parliament, or Act of the Governor General of India in Council, or by Letters Patent.

Company to change name.

**204.** Any company authorized by this Part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name by adding thereto the word "Limited."

Issue and effect of certificate of incorporation.

**205.** Upon compliance with the requisitions in this Part of this Act contained with respect to registration, and on payment of such fees, if any, as are payable under the tables marked B and C in the first schedule hereto, the Registrar shall certify under his hand that the company so applying for registration is incorporated as a company under this Act, and, in the case of a limited company, that it is limited, and thereupon such company shall be incorporated, and shall have perpetual succession and a common seal.

Certificate to be evidence of compliance with Act.

**206.** A certificate of incorporation given at any time to any company registered in pursuance of this Part of this Act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the company is authorized to be registered under this Act as a limited or unlimited company, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Act.

Date of incorporation.

**207.** All such property, moveable and immoveable, including all interests and rights in, to, and out of, property, moveable and immoveable, and including obligations and things in action, as may belong to, or be vested in, the company at the date of its registration under this Act, shall, on registration, pass to, and vest in, the company as incorporated under this Act, for all the estate and interest of the company therein. Transfer of property to company as incorporated.

**208.** The registration in pursuance of this Part of this Act of any company shall not affect or prejudice the liability of such company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of, such company previously to such registration. Registration not to affect prior rights and obligations.

**209.** All such suits and other legal proceedings as may, at the time of the registration of any company registered in pursuance of this Part of this Act, have been commenced by or against such company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place. Continuation of existing suits.

Nevertheless, execution shall not issue against the effects of any individual member of such company upon any decree or order obtained in any suit or proceeding so commenced as aforesaid ; Bar to execution against individual member.

but in the event of the property and effects of the company being insufficient to satisfy such decree or order, an order may be obtained for winding-up the company. Effect of company's assets being insufficient to satisfy decree.

**210.** When a company is registered under this Act in pursuance of this Part thereof, all provisions contained in any Act of Parliament, Act of the Governor General of India in Council, deed of settlement, contract of copartnery, Letters Patent or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association ; Effect of registration under Act.

and all the provisions of this Act shall apply to such company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject to the provisions following ; (that is to say), Application of Act to registered company.

Proviso—

(1.) that table A in the first schedule to this Act shall not, unless adopted by special resolution, apply to any company registered under this Act in pursuance of this Part thereof : as to table A :

(2.) that the provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered ; numbering of shares :

power to alter enactments,

(3.) that no company shall have power to alter any provision contained in any Act of Parliament, Act of the Legislative Council or Act of the Governor General of India in Council relating to the company:

or provisions of Letters Patent:

(4.) that no company shall have power, without the sanction of the Governor General of India in Council, to alter any provision contained in any Letters Patent relating to the company:

contributories in case of winding-up, and

(5.) In the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted prior to registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs, charges and expenses of winding-up the company, so far as relates to such debts or liabilities as aforesaid.

their liability

Every such contributory shall be liable to contribute to the assets of the company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid.

application of provisions in case of their death, insolvency or marriage.

In the event of the death or insolvency of any such contributory as last aforesaid, or marriage of any such contributory being a female, the provisions hereinbefore contained with respect to the representatives, heirs and devisees of deceased contributories, and with reference to the assignees of insolvent contributories, and to the husbands of married contributories, shall apply:

alteration of provisions of deeds, &c.

(6.) Nothing herein contained shall authorize any company to alter any such provisions contained in any deed of settlement, contract of copartnery, Letters Patent or other instrument constituting or regulating the company, as would, if such company had originally been formed under this Act, have been contained in the memorandum of association, and are not authorized to be altered by this Act:

power to alter constitution and regulations.

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this Act in pursuance of this Part thereof by virtue of any Act of Parliament, Act of the Governor General of India in Council, deed of settlement, contract of copartnery, Letters Patent or other instrument constituting or regulating the company.

Power of Court to restrain further proceedings.

**211.** The Court may, at any time after the presentation of a petition for winding-up a company registered in pursuance of this Part of this Act, and before making an order for winding-up the company, upon the application of any creditor of the company, restrain further proceedings in any suit or legal

proceeding against any contributory of the company as well as against the company as hereinbefore provided, upon such terms as the Court thinks fit.

**212.** Where an order has been made for winding-up a company registered in pursuance of this Part of the Act, in addition to the provisions hereinbefore contained, it is hereby further provided that no suit or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the Court and subject to such terms as the Court may impose.

Effect, as to suits and proceedings, of order for winding-up.

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## PART VIII.

### Application of Act to Unregistered Companies.

**213.** Subject as hereinafter mentioned, any partnership, association or company, except railway companies incorporated by Act of Parliament or Act of the Governor General of India in Council, consisting of more than seven members and not registered under this Act, and hereinafter included under the term unregistered company, may be wound up under this Act, and all the provisions of this Act with respect to winding-up shall apply to such company, with the following exceptions and additions :—

Winding-up of unregistered companies.

Application of Act.

(1.) An unregistered company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding-up, be deemed to be registered in that part of British India where its principal place of business is situate ; or if it has a principal place of business situate in more than one part of British India, then in each part of British India where it has a principal place of business :

In what place to be deemed to be registered.

Moreover, the principal place of business of an unregistered company, or (where it has a principal place of business situate in more than one part of British India) such one of its principal places of business as is situate in that part of British India in which proceedings are being instituted, shall, for all the purposes of the winding-up of such company, be deemed to be the registered office of the company :

Which to be deemed the registered office.

(2.) No unregistered company shall be wound up under this Act voluntarily, or subject to the supervision of the Court :

No winding-up voluntarily or under supervision.

(3.) The circumstances under which an unregistered company may be wound up are as follows ; (that is to say) :—

When company may be wound up.

(*a.*) whenever the company is dissolved or has ceased to carry on business, or is carrying on business only for the purpose of winding-up its affairs ;

(*b.*) whenever the company is unable to pay its debts ;

(*c.*) whenever the Court is of opinion that it is just and equitable that the company should be wound up :

When deemed unable to pay debts.

(4.) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts,

(*a.*) whenever a creditor to whom the company is indebted, by assignment or otherwise, in a sum exceeding five hundred rupees then due, has served on the company, by leaving the same at the principal place of business of the company or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor :

(*b.*) whenever any suit or other proceeding has been instituted against any member of the company for any debt or demand due or claimed to be due from the company, or from him in his character of member of the company, and, notice in writing of the institution of such suit or other legal proceeding having been served upon the company by leaving the same at the principal place of business of the company, or by delivering it to the secretary, or some director, manager or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of such notice paid, secured or compounded for such debt or demand, or procured such suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same :

(*c.*) whenever execution or other process issued on a decree or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the company, or any member thereof as such, or against any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied :

(*d.*) whenever it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts :

Who to be deemed contributory in event of company being wound up.

**214.** In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges and expenses of winding-up the company.

Every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid. His liability.

In the event of the death or insolvency of any contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs and devisees of a deceased contributory, and to the assignees of an insolvent contributory, shall apply. Provisions applied in case of death or insolvency.

**215.** The Court may, at any time after the making of an application for winding-up an unregistered company, and before making an order for winding-up the company, upon the application of any creditor of the company, restrain further proceedings in any suit or proceeding against any contributory of the company, or against the company as hereinbefore provided, upon such terms as the Court thinks fit. Power of Court to restrain further proceedings.

**216.** Where an order has been made for winding-up an unregistered company, in addition to the provisions hereinbefore contained in the case of companies formed under this Act, it is hereby further provided that no suit shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the Court and subject to such terms as the Court may impose. Effect, as to suits and proceedings, of order for winding-up.

**217.** If any unregistered company has no power to sue and be sued in a common name, or if, for any reason, it appears expedient, the Court may, by the order made for winding-up such company, or by any subsequent order, direct that all such property, moveable and immoveable, including all interests, claims and rights into and out of property, moveable and immoveable, and including things in action, as may belong to or be vested in the company, or to or in any person or persons on trust for or on behalf of the company, or any part of such property, is to vest in the official liquidator or official liquidators by his or their official name or names, and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, Power to Court to direct property to vest in official liquidator.

and the official liquidator or official liquidators may, in his or their official name or names, or in such name or names and after giving such indemnity as the Court directs, bring or defend any suits or other legal proceedings relating to any property vested in him or them, or any suits or other legal proceedings necessary to be brought or defended for the purposes of effectually winding-up the company and recovering the property thereof. And to liquidator thereupon to bring and defend suits.

**218.** The provisions made by this Part of the Act with respect to unregistered companies shall be deemed to be made in addition to, and not in restriction of, any provisions hereinbefore contained with respect to winding-up companies by the Court. Provisions of this Part of Act cumulative.

Additional powers of Court and liquidator.

The Court or official liquidator may, in addition to anything contained in this Part of the Act, exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding-up companies formed under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

## PART IX.

### Repeal of Acts and Miscellaneous Provisions.

**219, 220, 221, 222.** [*Repealed by Act No. XIV of* 1870.]

Compulsory registration of certain companies.

**223.** Every company required by any Act hereby repealed to register under the said Acts [a] or either of them, and which has not so registered, shall, on or before the expiration of the thirty-first day from the commencement of this Act, register itself as a company under this Act, in manner and subject to the regulations hereinbefore contained.

Exemption from fees.

No fees shall be charged in respect of the registration of any company required to register by this section.

Consequence of omission to register.

**224.** If any company required by the last section to register under this Act makes default in complying with the provisions thereof, then, from and after the day upon which such company is required to register under this Act, until the day on which such company is registered under this Act (which it is empowered to do at any time), the following consequences shall ensue, (that is to say)—

(1.) the company shall be incapable of suing, but shall not be incapable of being made a defendant to a suit:

(2.) no dividend shall be payable to any shareholder in such company:

(3.) each director or manager of the company shall, for each day during which the company so being in default carries on business, incur a penalty not exceeding one hundred rupees, and such penalty may be recovered by any person, whether a shareholder or not in the company, and be applied by him to his own use.

Nevertheless, such default shall not render the company so being in default illegal, nor subject it to any penalty or disability other than as specified in this section, and registration under this Act shall cancel any penalty or forfeiture, and put an end to any disability which any company may have incurred by reason of its not having registered under the said Act No. XIX of 1857.

[a] No. XLIII of 1850, No. XIX of 1857, and No. VII of 1860, which were repealed by section 219.

**225.** All offences under this Act may be tried by any officer exercising the powers of a Magistrate, unless the period of imprisonment to which the offender is liable shall exceed that which such officer is competent to award under the law for the time being in force in the place in which he is employed. Cognizance of offences under Act.

When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial before the Court of session. Commitment to Session Court.

**226.** If any offence which by this Act is declared to be punishable by any penalty shall be committed by any person within the local limits of the ordinary original civil jurisdiction of the High Court, such offence shall be punishable upon summary conviction by any Magistrate of Police of the place at which such Court is held. Punishment of offences under Act, committed within local limits of High Court.

**227.** All penalties imposed under the authority of this Act may, in case of non-payment thereof, be levied by distress and sale of the offender's moveable property, by warrant under the hand of the officer imposing the penalty. Levy of penalties by distress.

**228.** In case any such penalty shall not be forthwith paid, such officer may order the offender to be arrested and kept in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress. Arrest and detention until return made to distress-warrant.

**229.** If upon the return of the warrant it shall appear that no sufficient distress can be had whereon to levy such penalty, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such officer, by the confession of the offender or otherwise, that he has not sufficient moveable property whereupon such penalty could be levied if a warrant of distress were issued, any such officer may, by warrant under his hand, commit the offender to prison, for any term not exceeding two months when the amount of penalty shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount of penalty. Imprisonment if no sufficient distress.

**230.** In sections 1 and 18 of Act No. XXI of 1860 *(for the Registration of Literary, Scientific and Charitable Societies)*, the words "Registrar of Joint Stock Companies" shall be construed to mean registrar of joint stock companies under this Act or any Act for the time being in force. Construction of "Registrar of Joint Stock Companies" in Act No. XXI of 1860.

**231.** Save as provided in section 125, nothing in this Act shall be deemed to apply to the bank of Bengal, the bank of Madras and the bank of Bombay. Act not to apply to banks of Bengal, Madras or Bombay.

# FIRST SCHEDULE.

## TABLE A.

### Regulations for Management of a Company limited by Shares.

*Shares.*

(1.) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(2.) Every member shall, on payment of eight annas or such less sum as the company in general meeting may prescribe, be entitled to a certificate under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon.

(3.) If such certificate is worn out or lost, it may be renewed on payment of eight annas or such less sum as the company in general meeting may prescribe.

*Calls on Shares.*

(4.) The directors may from time to time make such calls upon the members in respect of all monies unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call; and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.

(5.) A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.

(6.) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

(7.) The directors may, if they think fit, receive from any member willing to advance the same all or any part of the monies due upon the shares held by him beyond the sums actually called for; and upon the monies so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

*Transfers of Shares.*

(8.) The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be

deemed to remain a holder of such share until the name of the transferee is entered in the register-book in respect thereof.

(9.) Shares in the company shall be transferred in the following form :—

I, *A B*, of , in consideration of the sum of rupees paid to me by *C D* of , do hereby transfer to the said *C D* the share (*or* shares) numbered , standing in my name in the books of the company, to hold unto the said *C D* his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I, the said *C D*, do hereby agree to take the said share (*or* shares) subject to the same conditions. As witness our hands, the day of .

(10.) The company may decline to register any transfer of shares made by a member who is indebted to them.

(11.) The transfer-books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

*Transmission of Shares.*

(12.) The executors or administrators of a deceased member shall be the only persons recognized by the company as having any title to his share.

(13.) Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may from time to time be required by the company.

(14.) Any person who has become entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.

(15.) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

(16.) The instrument of transfer shall be presented to the company, together with such evidence as the directors may require to prove the title of the transferee, and thereupon the company shall register the transferee as a member.

*Forfeiture of Shares.*

(17.) If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him requiring him to pay such call,

together with interest and any expenses that may have accrued by reason of such non-payment.

(18). The notice shall name a further day on or before which such call and all interest and expenses that have accrued by reason of such non-payment are to be paid.

It shall also name the place where payment is to be made, the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable.

The notice shall also state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

(19.) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter before payment of all calls, interest and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

(20.) Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company in general meeting thinks fit.

(21.) Any member whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

(22.) A solemn declaration in writing, made before a Magistrate, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated, as against all persons entitled to such share, and such declaration and the receipt of the company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

*Conversion of Shares into Stock.*

(23.) The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock.

(24.) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein or any

part of such interests, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred, or as near thereto as circumstances admit.

(25.) The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock, and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively, the same privileges and advantages, for the purpose of voting at meetings of the company and for other purposes, as would have been conferred by shares of equal amount in the capital of the company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

*Increase in Capital.*

(26.) The directors may, with the sanction of a special resolution of the company previously given in general meeting, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or, if no direction is given, as the directors think expedient.

(27.) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

(28.) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

*General Meetings.*

(29.) The first general meeting shall be held at such time, not being more than six months after the registration of the company, and at such place, as the directors may determine.

(30.) Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time

or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(31.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(32.) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting.

(33.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

(34.) Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting.

If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

*Proceedings at General Meetings.*

(35.) Seven days' notice at the least, specifying the place, the day and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(36.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, and the consideration of the accounts, balance-sheets and the ordinary report of the directors.

(37.) No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business.

Such quorum shall be ascertained as follows: that is to say, if the persons who have taken shares in the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty.

(38.) If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved.

In any other case it shall stand adjourned to the same day in the next week, at the same time and place; and if at such adjourned meeting a quorum is not present, it shall be adjourned *sine die.*

(39.) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

(40.) If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

(41.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(42.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(43.) If a poll is demanded by five or more members, it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting.

In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

*Votes of Members.*

(44.) Every member shall have one vote for every share up to ten.

He shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

(45.) If any member is a lunatic or idiot, he may vote by his committee or other legal curator; and if any member is a minor, he may vote by his guardian or any one of his guardians if more than one.

(46.) If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

(47.) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer, at any meeting held after the expiration of three months from the registration of the company,

unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

(48.) Votes may be given either personally or by proxy.

(49.) The instrument appointing a proxy shall be in writing, under the hand of the appointor, or if such appointor is a corporation, under their common seal, and shall be attested by one or more witness or witnesses.

No person shall be appointed a proxy who is not a member of the company.

(50.) The instrument appointing a proxy shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

(51.) Any instrument appointing a proxy shall be in the following form :—

Company Limited.

I , of ,
being a member of the Company Limited, and entitled to
vote (*or* votes), hereby appoint , of , as my proxy,
to vote for me and on my behalf at the (ordinary *or* extraordinary, *as the case may be*) general meeting of the company to be held on the day of
, and at any adjournment thereof (*or*, at any meeting of the company that may be held in the year ). As witness my hand, this day of

Signed by the said in the presence of

*Directors.*

(52.) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

(53.) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

(54.) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

*Powers of Directors.*

(55.) The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the foregoing

Act, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting ; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

(56.) The continuing directors may act notwithstanding any vacancy in their body.

*Disqualification of Directors.*

(57.) The office of director shall be vacated—

if he holds any other office or place of profit under the company ;

if he becomes bankrupt or insolvent ;

if he is concerned in or participates in the profits of any contract with the company ;

But the above rules shall be subject to the following exceptions :

That no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director ; nevertheless he shall not vote in respect of such contract or work ; and if he does so vote his vote shall not be counted.

*Rotation of Directors.*

(58.) At the first ordinary meeting after the registration of the company, the whole of the directors shall retire from office ; and at the first ordinary meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

(59.) The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the company shall, unless the directors agree among themselves, be determined by ballot.

In every subsequent year, the one-third or other nearest number who have been longest in office shall retire.

(60.) A retiring director shall be re-eligible.

(61.) The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

(62.) If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place ;

and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

(63.) The company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

(64.) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

(65.) The company in general meeting may, by a special resolution, remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead.

The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

*Proceedings of Directors.*

(66.) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business.

Questions arising at any meeting shall be decided by a majority of votes.

In case of an equality of votes, the chairman shall have a second or casting vote.

A director may at any time summon a meeting of the directors.

(67.) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(68.) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit.

Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

(69.) A committee may elect a chairman of its meetings.

If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

(70.) A committee may meet and adjourn as it thinks proper.

Questions arising at any meeting shall be determined by a majority of votes of the members present; and in case of an equality of votes the chairman shall have a second or casting vote.

(71.) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

*Dividends.*

(72.) The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

(73.) No dividend shall be payable except out of the profits arising from the business of the company.

(74.) The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the company or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

(75.) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

(76.) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years after having been declared, may be forfeited by the directors for the benefit of the company.

(77.) No dividend shall bear interest as against the company.

*Accounts.*

(78.) The directors shall cause true accounts to be kept,

of the stock-in-trade of the company;

of the sums of money received and expended by the company, and the matters in respect of which such receipt and expenditure take place; and

of the credits and liabilities of the company.

The books of account shall be kept at the registered office of the company, and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business.

(79.) Once at the least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

(80.) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries and other like matters.

Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

(81.) A balance-sheet shall be made out in every year and laid before the company in general meeting, and such balance-sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

(82.) A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

*Audit.*

(83.) Once at the least in every year the accounts of the company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors.

(84.) The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the company in general meeting.

(85.) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

(86.) The auditors may be members of the company; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company; and no director or other officer of the company is eligible during his continuance in office.

(87.) The election of auditors shall be made by the company at their ordinary meeting in each year.

(88.) The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.

(89.) Any auditor shall be re-eligible on his quitting office.

(90.) If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

(91.) If no election of auditors is made in manner aforesaid, the Local Government may, on the application of not less than five members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.

(92.) Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

(93.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company. He may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the company.

(94.) The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs; and in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the directors, and whether they or it have or has been satisfactory. Such report shall be read, together with the report of the directors, at the ordinary meeting.

*Notices.*

(95.) A notice may be served by the company upon any member either personally or by sending it through the post in a letter addressed to such member at his registered place of abode.

(96.) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

(97.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post-office.

*Dr.* *Balance-sheet* (a) *of the* *Company made up to* 18 *Cr.*

| | | Capital and Liabilities. | Rs. | As. |
|---|---|---|---|---|
| Capital. | | Showing: | | |
| | 1 | The number of shares ... ... .. | | |
| | 2 | The amount paid per share ... ... | | |
| | 3 | If any arrears of calls, the nature of the arrear, and the names of the defaulters ... | | |
| | 4 | The particulars of any forfeited shares ... | | |
| | | Showing: | | |
| II. Debts and Liabilities of the Company. | 5 | The amount of loans on mortgages or debenture-bonds ... ... ... | | |
| | 6 | The amount of debts owing by the company—Distinguishing— | | |
| | | (a) Debts for which acceptances have been given ... ... ... | | |
| | | (b) Debts to tradesmen for supplies of stock-in-trade or other articles ... ... | | |
| | | (c) Debts for law-expenses ... ... | | |
| | | (d) Debts for interest on debentures or other loans ... ... ... | | |
| | | (e) Unclaimed dividends ... ... | | |
| | | (f) Debts not enumerated above ... | | |
| | | Showing: | | |
| VI. Reserve Fund. | | The amount set aside from profits to meet contingencies ... ... ... | | |
| | | Showing: | | |
| VII. Profit and Loss. | | The disposable balance for payment of dividends, &c. | — | |
| Contingent Liabilities. | | Claims against the company not acknowledged as debts ... ... ... ... | — | |
| | | Monies for which the company is contingently liable ... ... ... ... | | |

| | | Property and Assets. | Rs. | As. |
|---|---|---|---|---|
| III. Property held by the Company. | | Showing: | | |
| | 7 | Immoveable property—Distinguishing— | | |
| | | (a) Freehold land... ... ... | | |
| | | (b) " buildings ... ... | | |
| | | (c) Leasehold " ... ... | | |
| | 8 | Moveable property—Distinguishing— | | |
| | | (d) Stock-in-trade ... ... | | |
| | | (e) Plant ... ... ... | | |
| | | The cost to be stated with deductions for deterioration in value as charged to the reserve-fund or profit and loss... ... ... | | |
| | | Showing: | | |
| IV. Debts owing to the Company. | 9 | Debts considered good for which the company hold bills or other securities ... ... | | |
| | 10 | Debts considered good for which the company hold no security ... ... ... | | |
| | 11 | Debts considered doubtful and bad ... | | |
| | | Any debt due from a director or other officer of the company to be separately stated. | | |
| | | Showing: | | |
| V. Cash and Investments. | 12 | The nature of investment and rate of interest ... ... ... ... | | |
| | 13 | The amount of cash, where lodged, and if bearing interest ... ... ... | — | |
| | | | — | |

(a) See clauses 81 and 82 of the foregoing table A.

## TABLE B.

TABLE OF FEES to be paid to the Registrar of Joint Stock Companies by a company having a capital divided into shares.

| | Rs. | A. | P. |
|---|---|---|---|
| For registration of a company whose nominal capital does not exceed rupees 20,000, a fee of ... | 40 | 0 | 0 |
| For registration of a company whose nominal capital exceeds rupees 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital; (that is to say)— | | | |
| for every 10,000 rupees of nominal capital, or part of 10,000 rupees after the first 20,000 rupees, up to 50,000 rupees ... ... ... | 20 | 0 | 0 |
| for every 10,000 rupees of nominal capital or part of 10,000 rupees after the first 50,000 rupees, up to 1,000,000 rupees ... ... ... | 5 | 0 | 0 |
| for every 10,000 rupees of nominal capital, or part of 100,000 rupees after the first 1,000,000 rupees | 1 | 0 | 0 |
| For registration of any increase of capital made after the first registration of the company, the same fees per 10,000 rupees, or part of 10,000 rupees, as would have been payable if such increased capital had formed part of the original capital at the time of registration. | | | |
| Provided that no company shall be liable to pay, in respect of nominal capital on registration, or afterwards, any greater amount of fees than 1,000 rupees, taking into account, in the case of fees payable on an increase of capital after registration, the fees paid on registration. | | | |
| For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company. | | | |
| For registering any document hereby required or authorized to be registered, other than the memorandum of association ... ... ... | 5 | 0 | 0 |
| For making a record of any fact hereby authorized or required to be recorded by the Registrar of Companies, a fee of ... ... ... | 5 | 0 | 0 |

## TABLE C.

TABLE OF FEES to be paid to the Registrar of Joint Stock Companies by a company not having a capital divided into shares.

| | Rs. | A. | P. |
|---|---|---|---|
| For registration of a company whose number of members, as stated in the articles of association, does not exceed 20 ... ... ... | 40 | 0 | 0 |
| For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100 ... | 100 | 0 | 0 |
| For registration of a company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of rupees 100, with an additional rupees 5 for every 50 members or less number than 50 members after the first 100. | | | |
| For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of ... ... | 400 | 0 | 0 |
| For registration of any increase on the number of members made after the registration of the company, in respect of every 50 members, or less than 50 members, of such increase ... ... | 5 | 0 | 0 |
| Provided that no one company shall be liable to pay on the whole a greater fee than rupees 400 in respect of its number of members, taking into account the fee paid on the first registration of the company. | | | |
| For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company. | | | |
| For registering any document hereby required or authorized to be registered, other than the memorandum of association ... ... | 5 | 0 | 0 |
| For making a record of any fact hereby authorized or required to be recorded by the Registrar of Companies, a fee of ... ... ... | 5 | 0 | 0 |

## FORM D.

FORM OF STATEMENT REFERRED TO IN PART III OF THE ACT.

[a] The capital of the company is rupees , divided into shares of . each.

The number of shares issued is . Calls to the amount of rupees per share have been made, under which the sum of rupees has been received.

The liabilities of the company on the first day of January (*or* July) were :—

Debts owing to sundry persons by the company :

Under decree, rupees
On specialty, rupees
On notes or bills, rupees
On simple contracts, rupees
On estimated liabilities, rupees

The assets of the company on that day were :—

Government securities [*stating them*], rupees
Bills of exchange and promissory notes, rupees
Cash at the bankers, rupees
Other securities, rupees

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## SECOND SCHEDULE.

### FORM A.

Memorandum of association of a company limited by shares.

1*st*.—The name of the company is "The Company, Limited."

2*nd*.—The registered office of the company will be situate in

3*rd*.—The objects for which the company is established are, " and the doing all such other things as are incidental or conducive to the attainment of the above object."

4*th*.—The liability of the members is limited.

5*th*.—The capital of the company is rupees divided into shares of rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum

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[a] If the company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names :—

| Names, addresses and descriptions of subscribers. | | | | Number of shares taken by each subscriber. |
|---|---|---|---|---|
| 1. | *A. B.* | of | ... | |
| 2. | *C. D.* | ,, | ... | |
| 3. | *E. F.* | ,, | ... | |
| 4. | *G. H.* | ,, | ... | |
| 5. | *I. J.* | ,, | ... | |
| 6. | *K. L.* | ,, | ... | |
| 7. | *M. N.* | ,, | ... | |
| | Total shares taken | | ... | |

Dated the day of

Witness to the above signatures.

*O. P.* of

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FORM B.

Memorandum and articles of association of a company limited by guarantee, and not having a capital divided into shares.

*Memorandum of Association.*

1*st.*—The name of the company is "*The Mutual Calcutta Marine Association,* Limited."

2*nd.*—The registered office of the company will be situate in Calcutta.

3*rd.*—The objects for which the company is established are "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4*th.*—Every member of the company undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding rupees 100.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

*Names, Addresses and Descriptions of Subscribers.*

1. *A. B.* of
2. *C. D.* of
3. *E. F.* of
4. *G. H.* of
5. *I. J.* of
6. *K. L.* of
7. *M. N.* of

Dated the day of

Witness to the above signatures.

*O. P.* of

*Articles of Association to accompany preceding Memorandum of Association.*

(1.) The company, for the purpose of registration, is declared to consist of five hundred members.

(2.) The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

*Definition of Members.*

(3.) Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

*General Meetings.*

(4.) The first general meeting shall be held at such time not being more than three months after the incorporation of the company, and at such place as the directors may determine.

(5.) Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year at such place as may be determined by the directors.

(6.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(7.) The directors may whenever they think fit, and they shall upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.

(8.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

(9.) Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting.

If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists or any other five members may themselves convene a meeting.

*Proceedings at General Meetings.*

(10.) Seven days' notice at the least, specifying the place, the day and the hour of meeting, and, in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(11.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets and the ordinary report of the directors.

(12.) No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of such business.

Such quorum shall be ascertained as follows: that is to say, if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.

(13.) If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved.

In any other case it shall stand adjourned to the same day in the following week, at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

(14.) The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

(15.) If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of such meeting.

(16.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(17.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour or against such resolution.

(18.) If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs; and the result of such poll shall be deemed to be the resolution of the company in general meeting.

*Votes of Members.*

(19.) Every member shall have one vote and no more.

(20.) If any member is a lunatic or idiot, he may vote by his committee or other legal curator: if any member is a minor he may vote by his guardian or any one of his guardians if more than one.

(21.) No member shall be entitled to vote at any meeting unless all monies due from him to the company have been paid.

(22.) Votes may be given either personally or by proxies.

A proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under its common seal.

(23.) No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

(24) Any instrument appointing a proxy shall be in the following form :—

COMPANY, LIMITED.

I , of , being a member of the Company, Limited, hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the company to be held on the day of , and at any adjournment thereof to be held on the day of next [*or* at any meeting of the company that may be held in the year ].

As witness my hand, this day of

Signed by the said in the presence of

*Directors.*

(25.) The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

(26.) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

*Powers of Directors.*

(27.) The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not hereby required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

*Election of Directors.*

(28.) The directors shall be elected annually by the company in general meeting.

*Business of Company.*

*(Here insert rules as to mode in which business of insurance is to be conducted).*

*Accounts.*

(29.) The accounts of the company shall be audited by a committee of five members, to be called the audit-committee.

(30.) The first audit-committee shall be nominated by the directors out of the body of members.

(31.) Subsequent audit-committees shall be nominated by the members at the ordinary general meeting in each year.

(32.) The audit-committee shall be supplied with a copy of the balance-sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

(33.) The audit-committee shall have a list delivered to them of all books kept by the company, and they shall at all reasonable times have access to the books and accounts of the company.

They may, at the expense of the company, employ accountants or other persons to assist them in investigating such accounts, and they may in relation to such accounts examine the directors or any other officer of the company.

(34.) The audit-committee shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by these regulations of the company, and properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read together with the report of the directors at the ordinary meeting.

*Notices.*

(35.) A notice may be served by the company upon any member, either personally or by sending it through the post in a letter addressed to such member at his registered place of abode.

(36.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post-office.

*Winding-up.*

(37.) The company shall be wound up voluntarily whenever an extraordinary resolution, as defined by The Indian Companies' Act, 1866, is passed, requiring the company to be wound up voluntarily.

*Names, Addresses and Descriptions of Subscribers.*

| | | | | | | |
|---|---|---|---|---|---|---|
| 1. | *A. B.* of | ... | ... | . | | *Merchant.* |
| 2. | *C. D.* of | ... | ... | ... | | ,, |
| 3. | *E. F.* of | ... | ... | ... | | ,, |
| 4. | *G. H.* of | ... | ... | ... | | ,, |
| 5. | *I. J.* of | ... | ... | ... | | ,, |
| 6. | *K. L.* of | ... | ... | ... | | ,, |
| 7. | *M. N.* of | .. | .. | ... | | ,, |

Dated the day of 18 .

Witness to the above signatures.

*O. P.* of

## FORM C.

Memorandum and articles of association of a company limited by guarantee, and having a capital divided into shares.

*Memorandum of Association.*

1*st.*—The name of the company is "*The* *Hotel Company,* Limited."

2*nd.*—The registered office of the company will be situate in

3*rd*—The objects for which the company is established are "the facilitating travelling in by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4*th.*—Every member of the company undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding rupees 200.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

*Names, Addresses and Descriptions of Subscribers.*

1. *A. B.* of
2. *C. D.* of
3. *E. F.* of
4. *G. H.* of
5. *I. J.* of
6. *K. L.* of
7. *M. N.* of

Dated the day of 18 .

Witness to the above signatures.

*O P.* of

*Articles of Association to accompany preceding Memorandum of Association.*

1. The capital of the company shall consist of five lákhs of rupees divided into five thousand shares of one hundred rupees each.

2. The directors may, with the sanction of the company in general meeting, reduce the amount of shares.

3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

4. All the articles of table A shall be deemed to be incorporated with these articles, and to apply to the company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

| Names, addresses and descriptions of subscribers. | Number of shares taken by each subscriber. |
|---|---|
| 1. *A. B.* of | |
| 2. *C. D.* of | |
| 3. *E. F.* of | |
| 4. *G. H.* of | |
| 5. *I. J.* of | |
| 6. *K. L.* of | |
| 7. *M. N.* of | |
| Total shares taken | |

Dated the day of 186 .

Witness to the above signatures.

*O. P.* of

Memorandum and articles of association of an unlimited company having a capital divided into shares.

*Memorandum of Association.*

1*st*.—The name of the company is "*The Patent Company.*"

2*nd*.—The registered office of the company will be situated in

3*rd*.—The objects for which the company is established are "the working of a patent method of , of which method *O. P.* of is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

*Names, Addresses and Descriptions of Subscribers.*

1. *A. B.* of
2. *C. D.* of
3. *E. F.* of
4. *G. H.* of
5. *I. J.* of
6. *K. L.* of
7. *M. N.* of

Dated the day of 186 .

Witness to the above signatures.

*Q. R.* of

*Articles of Association to accompany the preceding Memorandum of Association.*

*Capital of the Company.*

The capital of the company is twenty thousand rupees, divided into twenty shares of one thousand rupees each.

*Application of Table A.*

All the articles of table A shall be deemed to be incorporated with these articles, and to apply to the company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

| Names, addresses and descriptions of subscribers. | Number of shares taken by subscribers. |
|---|---|
| 1. *A. B.* of | |
| 2. *C. D.* of | |
| 3. *E. F.* of | |
| 4. *G. H.* of | |
| 5. *I. J.* of | |
| 6. *K. L.* of | |
| 7. *M. N.* of | |

Total shares taken

Dated the day of 186

Witness to the above signatures.

*Q. R.* of

FORM E. As required by the second part of the Act.

Summary of capital and shares of the Company made up to the day of

Nominal capital Rs. , divided into shares of Rs. each.

Number of shares taken up to the day of

There has been called up on each share Rs.

Total amount of calls received Rs.

Total amount of calls unpaid Rs.

List of persons holding shares in the Company on the day of and of persons who have held shares therein at any time during the year immediately preceding the said day of , showing their names and addresses and an account of the shares so held.

| Folio in register-ledger containing particulars. | Names, Addresses and Occupations. | | | | Account of Shares. | | | | | Remarks. |
|---|---|---|---|---|---|---|---|---|---|---|
| | Surname. | Christian Name. | Address. | Occupation. | Shares held by existing members on the day of | Additional shares held by existing members during preceding year. | | Shares held by persons no longer members. | | |
| | | | | | | Number. | Date of transfer. | Number. | Date of transfer. | |
| | | | | | | | | | | |

# THE INDIAN POST OFFICE ACT, 1866.

## ARRANGEMENT OF SECTIONS.

Preamble.

### PART I.

PRELIMINARY.

SECTION.

1. Short title.
2. Interpretation-clause.
3. [*Repealed.*]
4. References to Act XVII, 1854, read as to this Act.
5. Exclusive privilege of carrying letters vested in Government of India. Bar to collection of excepted letters.
6. Persons expressly forbidden to collect, carry or deliver letters.
7. Appointment of officers for service of post-office.

### PART II.

POSTAGE-RATES.

8. Postage-rates on letters.
9. Postage-rates on newspapers.
10. Newspapers how sent by letter-post.
11. Newspapers when charged with letter-postage.
12. Proof-sheets.
13. Postage-rates on books, packets of newspapers, &c.
14. Inland banghy-postage.
15. Table of distances for calculation of banghy-postage.
16. Where no banghy-post, parcels, books, &c., carried by letter-post. Effect of false certificate.
17. When book-packets and parcels to go by letter-post.
18. Ship-postage on parcels.
19. Governor General may direct pre-payment of postage in all cases.
20. Governor General may alter postage-rates.
21. Governor General may fix rates of steam-postage.
22. Governor General may fix postage-rates for articles sent wholly or partly by sea.
23. Governor General may fix express postage-rates.
24. Redirected letters.

SECTION.

## PART III.

### REGISTERED LETTERS.

25. Letters may be registered.
Fee for registering.
26. Power to declare in what cases registration compulsory, and direct levy of double registration-fee.

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## PART IV.

### REDELIVERED, UNPAID, UNCLAIMED AND REFUSED LETTERS.

27. Redelivery of letters and other articles once put into post-office.
28. Liability for postage of receiver of unpaid letters, &c.
Sender when liable.
Recovery of postage payment of which refused.
Power to detain other letters to person refusing.
Power to remit postage.
29. List of unclaimed letters.
Return to posting-office for delivery to sender.
Letters of which sender not ascertainable without opening.
Opening letters.
Return to sender.
When destroyed.
Disposal of money and valuables.
30. Refused letters how dealt with.
Disposal of money and valuables.

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## PART V.

### MAILS ON BOARD INWARD AND OUTWARD-BOUND VESSELS.

31. Commanders of inward-bound vessels carrying mails how to proceed on arrival.
Penalty.
32. Penalties for detention of letters on board inward-bound vessel.
33. Bounty-money.
Limitation of claim thereto.
Saving of letters, &c., conveyed in mail-ships.
34. Commanders of outward-bound vessels to receive mails on board.

SECTION.

## PART VI.

### POSTAGE-STAMPS.

35. Stamped letters considered pre-paid.
36. Postage-stamps provided by Government.
37. Management of postage-stamps.
Purpose of issue.
Crediting sale-proceeds.
38. Power to make rules for appointment and government of vendors of postage-stamps.
39. Penalty for breach of such rules.
40. Penalty for refusing to supply stamps.
41. Penalty for selling stamps for price higher than value denoted.

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## PART VII.

### OFFENCES AGAINST THE POST-OFFICE.

42. Penalty for sending dangerous substance by post.
43. Making false certificate to defraud post-office.
Sending private letter as official.
Penalty.
44. Penalty for detaining mails or opening mail-bags.
45. Penalty for retaining letters, &c., delivered by mistake.
46. Penalty for conveying letter in breach of privilege.
Penalty for performing, otherwise than by post, services incidental to conveying letters.
Penalty for making clubbed packet or tendering or delivering letter to be sent therein.
Penalty for sending letter in breach of privilege, or delivering letter to be so sent.
Penalty for collecting excepted letters to send them otherwise than by post.
Penalty for breach of provisions of section 6.
Penalty for practice of acts mentioned in section.
47. Penalty for neglect on part of persons employed to carry mails.
48. Penalty for stealing, &c, or opening letters, &c., by persons employed in post-office

SECTION.

49. Penalty for fraudulently altering marks on letters, &c., by persons employed in post-office.
50. Penalty for preparing incorrectly, or altering or secreting, documents by persons employed in post-office.
51. Penalty for sending letters on which postage not paid or charged, by persons employed in post-office.
52. Penalty for abetting or concealing offences under Act.
53. Person charged with offence punishable with fine only may be summarily convicted.
54. Conviction quashed on merits only.
    Form of conviction.
55. Powers of Assistant or Deputy Magistrate in trial of charges referred by Magistrate.
56. Fines how levied.
    Detention of offender.
    Imprisonment if no sufficient distress, &c.
57. Share of fine to informer.
58. No proceedings for recovery of fines taken without order.
59. Punishment of post-office servants committing offences in allied States.
    Officers authorized to try them.
60. Letters, &c., suspected to contain contraband articles, or writing in contravention of Act, how dealt with.
    Witnesses to examination of letter.
    Delivery of letter to addressee.
    Power to require customs-pass.
61. In charges for offences under Act, property sent by post laid in Post Master General.
    Proof of value unnecessary.
    Statement that offender employed in post-office sufficient.

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## PART VIII.

### MISCELLANEOUS.

62. Letters on Her Majesty's service, duly certified as such, how charged.
63. Governor General may frame rules.
64. District-dáks.
65. Government not responsible for loss.
    Responsibility of its servants.

## ACT No. XIV OF 1866.

*Received the Governor General's assent on the 23rd March* 1866.

# An Act to amend the law for the management of the Post Office, for the regulation of the Duties of Postage, and for the punishment of offences against the Post Office.

Preamble.

WHEREAS it is expedient to amend the law for the management of the Post-office, for the regulation of the duties of postage, and for the punishment of offences against the Post-office; It is enacted as follows:—

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## PART I.

### PRELIMINARY.

Short title.

1. This Act may be cited as "The Indian Post Office Act, 1866."

Interpretation-clause.

2. In this Act—unless there be something repugnant in the subject or context—

"Criminal Court."

"Criminal Court" includes every Judge, Magistrate, Justice of the Peace or Police Magistrate lawfully exercising jurisdiction in criminal cases:

"Fine."

"Fine" includes a penalty or forfeiture, or a sum of money due upon a forfeited recognizance:

"Clubbed packet."

"Clubbed packet" shall be taken to mean a packet containing a collection of letters, not made by an agent of the Post-office, transmitted through the Post-office with the view of the enclosed letters being delivered to more than one person through the agent of the person by whom the packet was made up:

"Newspaper."

"Newspaper" shall include any periodical publication, published at regular intervals not exceeding thirty-one days:

"Mails."

"Mails" shall include any letter, parcel or other article conveyed under the provisions of this Act, as well as any box, bag or other article, or any carriage, horse, messenger or other person employed or used by the Post-office for the conveyance or safe custody of the mails; and

"British India."

"British India" includes the territories which are now or shall be vested in Her Majesty or Her successors by the Statute 21 & 22 Vic., cap. 106 (An Act for the better government of India).

3. [*Repealed by Act No. XIV of* 1870.]

References to Act XVII, 1854, read as to this Act.

4. References to any section of Act No. XVII of 1854, made in any Act passed subsequent thereto, shall be read as if made to the corresponding section of this Act.

5. Wheresoever, within British India, posts or postal communications are or shall be established by the Government of India, the said Government shall have the exclusive privilege of conveying by post, from one place to another, all letters, except in the following cases, and shall also have the exclusive privilege of performing all the incidental services of receiving, collecting, sending, despatching and delivering all letters, except in the following cases, that is to say— Exclusive privilege of carrying letters vested in Government of India.

(1) letters sent by a private friend in his way, journey or travel, so as such letters be delivered by such friend to the person to whom they shall be directed, without hire, reward or other profit or advantage for receiving, carrying or delivering the same:

(2) letters solely concerning the affairs of the sender or receiver thereof, sent by a messenger on purpose:

(3) letters solely concerning goods or other property sent either by sea or land to be delivered with the goods or property which such letters concern, without hire, reward or other profit or advantage for receiving, carrying or delivering such letters.

But nothing herein contained shall authorize any person to make a collection of such excepted letters for the purpose of sending them in the manner hereby authorized. Bar to collection of excepted letters.

6. Wheresoever, within British India, posts or postal communications are or shall be established by the Government of India, the following persons are expressly forbidden to collect, carry, tender or deliver any letter or letters, or to receive any letter for the purpose of carrying or delivering the same, although they shall not receive hire or reward for so doing, that is to say— Persons expressly forbidden to collect, carry or deliver letters.

(1) common carriers of passengers or goods, and their drivers, servants or agents, except letters solely concerning goods in their carriages:

(2) owners and commanders of ships, steam-boats or other vessels passing on any river or canal, or to or from any port in British India, and their servants or agents, except letters solely concerning goods on board.

7. For carrying on the service of the post-office, it shall be lawful for the Governor General of India in Council to appoint or to authorize the appointment of such officers, with such official styles or designations, and to invest them with, and delegate to them, such powers, not inconsistent with the provisions of this Act, as the said Governor General of India in Council may from time to time deem expedient. Appointment of officers for service of post-office.

## PART II.

### POSTAGE-RATES.

Postage-rates on letters.

8. Wheresoever posts or postal communications are or shall be established by the Government of India, postage, if pre-paid by a stamp or stamps as hereinafter provided, shall be charged by weight on letters transmitted by the letter-post by land, according to the following scale:—

On every letter not exceeding a quarter of a tolah in weight,—six pie:

On every letter exceeding a quarter of a tolah and not exceeding half a tolah in weight,—one anna:

On every letter exceeding half a tolah and not exceeding one tolah in weight,—two annas:

And for every half tolah in weight above one tolah, one additional anna; and every fraction of half a tolah above one tolah shall be charged as one additional half tolah.

Every article transmitted by the letter-post shall be deemed a letter within the meaning of this section, unless it be an article on which a different rate of postage shall be chargeable under this Act.

Postage-rates on newspapers.

9. Wheresoever posts or postal communications are or shall be established by the Government of India, postage on newspapers, transmitted by the letter-post by land, shall be charged by weight according to the following scale:—

On every newspaper not exceeding ten tolahs in weight,—one anna:

On every newspaper exceeding ten tolahs and not exceeding twenty tolahs in weight,—two annas:

And for every ten tolahs in weight above twenty tolahs, one additional anna; and every fraction of ten tolahs shall be charged as ten additional tolahs.

An extra or supplement to any newspaper, bearing the same date as the newspaper and transmitted therewith under the same cover, shall be deemed part of the newspaper.

Nothing contained in this Act shall be construed to oblige any person to send any newspaper through the post-office, but it shall be lawful for all persons to send the same in any other manner.

Newspapers how sent by letter-post.

10. A newspaper shall not be sent by the letter-post at the rates prescribed in the last preceding section, unless the following conditions be observed, that is to say—

(1) it shall be without a cover, or in a short cover open at both ends:

(2) there shall be no word printed on such newspaper after its publication, or upon the cover thereof, nor any writing or mark upon it, or upon the

cover of it, except the name and address of the person to whom it is sent, and the name and address of the sender:

(3) there shall be no paper or thing enclosed in or with any such newspaper.

Newspapers when charged with letter-postage.

**11.** Any newspaper sent by the letter-post in respect of which the above conditions shall not be observed shall, together with any thing enclosed in or with the same, be charged with postage at the rate which would be charged on an unstamped letter of equal weight.

Proof-sheets.

**12.** Proof-sheets marked as such may be sent by the letter-post at the rates prescribed for newspapers, provided the contents be correctly certified on the cover by the signature in full of the sender; otherwise the same shall be charged with postage at the rate which would be charged on an unstamped letter of equal weight.

Postage-rates on books, packets of newspapers, &c.

**13.** Subject to such rules and conditions as the Governor General of India in Council may from time to time direct,[a] books, packets of newspapers and other articles, provided the postage thereon be pre-paid by means of a proper stamp or stamps to be affixed thereon as hereinafter provided, shall be charged with the following rates of postage, without reference to the distance to which they may be carried:—

If not exceeding ten tolahs in weight,—one anna:

If exceeding ten tolahs and not exceeding twenty tolahs in weight,—two annas:

And for every ten tolahs in weight above twenty tolahs, one additional anna; and every fraction of ten tolahs shall be charged as ten additional tolahs.

If the postage chargeable on any such book or other article be not pre-paid as aforesaid, it shall be subject to the rate of postage prescribed for banghy-parcels in section 14 of this Act.

Inland banghy-postage.

**14.** Inland postage shall be charged by weight and distance, on parcels sent by the banghy-post, according to the following scale:

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[a] See Financial Department Notification, No. 1445, dated 28th February 1873, *Gazette of India*, 1st March 1873, Part I, p. 192.

| For distances | | If not exceeding in weight | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 20 Tolahs. | | 50 Tolahs. | | 100 Tolahs. | | 200 Tolahs. | | 300 Tolahs. | | 400 Tolahs. | | 500 Tolahs | | 600 Tolahs. | |
| | Miles. | Rs. | As. | Rs. | As. | Rs. | As. | Rs. | As. | Rs. | As. | Rs. | As. | Rs. | As. | Rs. | As. |
| Not exceeding ... | 300 | 0 | 4 | 0 | 8 | 0 | 12 | 1 | 8 | 2 | 4 | 3 | 0 | 3 | 12 | 4 | 8 |
| Not exceeding ... | 600 | 0 | 8 | 1 | 0 | 1 | 8 | 3 | 0 | 4 | 8 | 6 | 0 | 7 | 8 | 9 | 0 |
| Not exceeding .. | 900 | 0 | 12 | 1 | 8 | 2 | 4 | 4 | 8 | 6 | 12 | 9 | 0 | 11 | 4 | 13 | 8 |
| Not exceeding ... | 1,200 | 1 | 0 | 2 | 0 | 3 | 0 | 6 | 0 | 9 | 0 | 12 | 0 | 15 | 0 | 18 | 0 |
| Exceeding ... | 1,200 | 1 | 4 | 2 | 8 | 3 | 12 | 7 | 8 | 11 | 4 | 15 | 0 | 18 | 12 | 22 | 8 |

Provided that not more than one letter shall be enclosed in a banghy-parcel, under a penalty not exceeding fifty rupees.

15. Banghy-postage, when chargeable by distance under section 14 of this Act, shall be calculated and charged according to such table of distances as shall be authorized from time to time for that purpose by the Governor General of India in Council.

Table of distances for calculation of banghy-postage.

And it shall be lawful for the Governor General of India in Council to declare that the distances from or to post-offices not entered in such table shall, for the purposes of this Act, be regarded as represented by the distances shown in the table from or to the post-offices nearest to them respectively.

Each Post Master General shall prepare from the aforesaid table, in the English and vernacular languages, for the use of every post-office under his control, a list of all the other post-offices in India, arranged alphabetically, and showing the distance of each of them from the post-office for the use of which it is made, and such list shall be affixed in some conspicuous place in such post-office.

16. Where there is no banghy-post established on any line of road, parcels, books and other articles shall be received and transmitted by the letter-post, and shall be charged with postage according to the scale in section 13 or 14 of this Act, as the case may be, if it be certified in writing, on such parcel, book-packet or other article under the full signature and address of the sender, that it does not contain any letter or other written communication on which a higher rate of postage is chargeable under any section of this Act.

Where no banghy-post, parcels, books, &c., carried by letter-post.

If any such certificate be false, any such letter or other written communication contained in such certified parcel, book-packet or other article shall be charged with letter-postage as if sent separately, and the sender shall be subject to the penalty hereinafter provided.

Effect of false certificate.

17. All book-packets and parcels not exceeding ten tolahs in weight, sent through the post-office, shall be conveyed by letter-post, and be charged with letter-postage, unless specially directed to be sent by banghy or book-packet post.

When book-packets and parcels to go by letter-post.

18. On all parcels chargeable under section 14 of this Act with banghy-postage according to distance when conveyed by land, ship-postage shall be charged when they are conveyed by means of Her Majesty's Indian post by sea, according to the following scale, that is to say—

Ship-postage on parcels.

On every parcel not exceeding twenty tolahs in weight,—two annas:

On every parcel exceeding twenty tolahs but not exceeding forty tolahs in weight,—four annas:

On every parcel exceeding forty tolahs but not exceeding one hundred tolahs in weight,—eight annas:

And for every hundred tolahs in weight above one hundred tolahs,—eight additional annas.

Every fraction of one hundred tolahs above one hundred tolahs shall be charged as one hundred additional tolahs; and if such parcel be conveyed by Her Majesty's Indian post, partly by land and partly by sea, ship-postage shall be charged in addition to inland banghy-postage.

Governor General may direct prepayment of postage in all cases.

**19.** It shall be lawful for the Governor General of India in Council at any time to direct that all or any letters or other articles shall not be forwarded by post, unless the postage thereof shall be fully prepaid by means of a proper stamp or stamps; or that on all or any letters or other articles on which the postage shall not be fully pre-paid by a stamp or stamps, or otherwise, as the said Governor General in Council shall direct, there shall be charged such higher rates of postage as from time to time may be deemed expedient, not exceeding double the rates of postage hereinbefore specified.[a]

Governor General may alter postage-rates.

**20.** It shall be lawful for the Governor General of India in Council from time to time to authorize the levy of postage at rates different from those prescribed in this Act, provided that no increase be made in any particular of the rates prescribed in sections 8 and 9 of this Act.[b]

Governor General may fix rates of steam-postage.

**21.** It shall be lawful for the Governor General of India in Council from time to time to direct that postage-duties, different from the rates authorized by this Act, shall be chargeable on letters or other articles to be specified in such order, sent through the post from or to any part of Great Britain, or any British colony, or any foreign country to or from any places in British India.[c]

The postage charged on any letter or other article specified in any Order of Council made under this section, whether under the name of steam-postage or any other denomination, shall, after the rates of such postage have been published in the official gazette of any presidency, be recovered in the same manner as postage under this Act.

Governor General may fix postage-rates for articles sent wholly or partly by sea.

**22.** It shall be lawful for the Governor General of India in Council to fix, from time to time, rates of postage to be levied on all letters or other articles transmitted by post, by sea, or partly by sea and partly by land, from one part or place in India to another.[a]

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[a] See Notifications No. 189, dated 21st April 1866, and No. 3415, dated 25th October 1867, *Gazette of India*, 21st April 1866, p. 662: 26th October 1867, p. 1461.

[b] See Financial Department Notifications No. 163, dated 7th January 1869, *Gazette of India*, 9th January 1869, p. 38: No. 2756, dated 26th November 1869, *Gazette of India*, 27th November 1869, part I, p. 477: No. 957, dated 2nd June 1871, *Gazette of India*, 3rd June 1871, part I, p. 414

[c] See, as to correspondence sent to, or received from, countries or ports in Asia, Financial Department Notification, No. 2868, dated 7th October 1868, *Gazette of India*, 10th October 1868, p. 1505. As to correspondence with Germany, France and Italy, No. 5546, dated 11th September 1874, *Gazette of India*, 12th September 1874, part I, p. 461. Nos. 258 and 259, dated 16th April 1875, *Gazette of India*, 17th April 1875, part I, pp. 179, 181. As to redirected newspapers, Financial Department Notification No. 614, dated 25th January 1872, *Gazette of India*, 27th January 1872, part I, p. 116.

It shall not be necessary that such rates be uniform; but they may vary according to the conveyance or route by which such letters or other articles shall be sent.

Governor General may fix express postage-rates.

**23.** It shall be lawful for the Governor General of India in Council from time to time to fix and order any rate of postage to be charged for the conveyance of letters or other articles by express, in addition to or instead of any other rates of postage chargeable on such letters and articles under this Act.

Redirected letters.

**24.** On every letter or other article which shall be redirected at any post-office or forwarded by post from any place to which it shall have been conveyed by post, there shall be charged for the postage thereof from the place at which the same shall be redirected, or from which it shall be forwarded, in addition to all other postage paid or due thereon, the rate of postage to which it would be liable if posted and prepaid by stamp at the place where it shall be redirected or from which it shall be forwarded.

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## PART III.

### REGISTERED LETTERS.

Letters may be registered.

**25.** Any person posting a letter or other article shall be entitled to require that it shall be registered at the receiving post-office, and that a receipt shall be granted for such registered letter or article;

Fee for registering.

and it shall be lawful for the Governor General of India in Council to direct that, in addition to any rates of postage payable under this Act, a fee not exceeding four annas shall be charged on any letter or other article which the sender thereof shall require to be so registered, and such registration-fee shall be paid by means of a stamp or stamps affixed to the letter or other article.

Power to declare in what cases registration compulsory, and direct levy of double registration-fee.

**26.** It shall be lawful for the Governor General of India in Council from time to time by order to declare in what cases registration shall be compulsory,[a] and to direct that a double registration-fee shall be levied on the delivery of any letter or other article which ought, under the order of the Governor

[a] "In exercise of the powers conferred by section 26 of the Indian Post-office Act, 1866, the Governor General in Council is pleased to declare and direct as follows:—

1. If a cover posted at any Indian post-office and addressed to any place in India contains coin or a currency-note or any portion thereof, or manifestly contains postage or other stamps or labels, or a cheque, hundí, bank-note, bank post bill, bill of exchange or the like, the registration thereof under section 25 of the said Act shall be compulsory.
2. A double registration-fee shall be levied on the delivery of any cover which ought under this order to have been registered at the time of posting, and on which the registration-fee shall not have been prepaid as directed in section 25 of the said Act.

Nothing in this order necessitates the registration of any cover containing postage or other stamps or labels, a cheque, hundí, bank-note and the like, unless the contents thereof are either superscribed upon the cover, or are known or manifest to the officers of the Post Office Department, owing to the transparency, insecurity, or insufficiency of the cover, or to any other cause." Financial Department Notification, No. 2042, dated 16th August 1872, *Gazette of India*, 17th August 1872, Part I, p. 782.

General in Council, to have been registered at the time of posting, on which the registration-fee shall not have been prepaid as directed in section 25.

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## PART IV.

### REDELIVERED, UNPAID, UNCLAIMED AND REFUSED LETTERS.

Redelivery of letters and other articles once put into post-office.

27. No person having delivered into any post-office any letter or other article shall be entitled to recall the same; but nothing in this section shall prevent the redelivery of any letter or other article to the sender thereof, subject to such rules and regulations, if any, as the Governor General of India in Council may, from time to time, prescribe in that behalf.[a]

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[a] "In exercise of the powers conferred by section 27 of the Indian Post-office Act, 1866, the Governor General in Council is pleased to revoke all rules and regulations heretofore prescribed for the redelivery of letters and articles delivered into any post-office to the sender thereof, and to prescribe the following rules in that behalf:—

(1). No letters or other article delivered into any post-office shall be redelivered except under the orders of—

(*a*)—The chief postal authority in a province;
(*b*)—The Director General of the Post-office;
(*c*)—The Local Government or Administration; or
(*d*)—The Governor General in Council.

(2). A fee of one rupee shall be paid with any application for such redelivery.

(3). An application for the redelivery of any such letter or article may be presented in writing to the said officers, Governments or Administrations, directly or through any officer in charge of a post-office.

(4). Such application shall be received only from the writer of the letter or the sender of the article, or from some person duly authorized in this behalf by such writer or sender.

(5). The application shall be accompanied by a statement (which may be enclosed in a sealed cover) of the reasons why redelivery of the letter or article is sought. Such sealed cover shall be opened only by the officer, or by a secretary to the Government or Administration, to whom or to which the application is presented.

(6). Upon receipt of such application and statement, together with a fee of one rupee as aforesaid, by a post-master or other officer in charge of a post-office, he shall immediately send the application and statement to the nearest officer or authority having power under rule (1) to dispose of such application.

(7). If the letter or article of which redelivery is sought is in his possession, the said post-master or other officer, instead of forwarding it to its address, shall send it with the application to the said officer or authority.

(8). If the letter or article is not in the possession of the said post-master or other officer, he shall require any other officer of the post-office in whose possession it may be to abstain from sending it to its address, and to send it instead to the authority or officer to which or to whom the application will be or has been sent. The requisition to such other officer may be sent by telegraph, but all expenses attending its transmission must be borne by the applicant.

(9). When the application reaches the officer or authority named in rule (1) to whom it is thus sent, he or it may order redelivery of the letter or article upon being satisfied that the applicant is the writer or sender, and that sufficient reasons have been given for the redelivery, otherwise he shall send it at once to its address.

(10). No letter delivered into the post shall be redelivered in any case to any one but the writer, or to some person authorized by the writer in writing to receive it; and no article not being a letter delivered into the post shall be redelivered to any one but the sender, or to some person authorized by the sender in writing to receive it.

(11). In the foregoing rules the word "writer" does not include a person who writes a letter which another dictates or directs to be written, or who copies a letter which has been written by another; but in each of such cases the author of the letter shall, for the purposes of these rules, be held to be the writer." Financial Department Notification, No. 2982, dated 14th November, 1873, *Gazette of India*, 15th November 1873, Part I, p. 954.

**28.** The person to whom any letter or other article, the postage of which has not been paid, shall be delivered, shall not be bound to pay the postage if he forthwith return the same unopened; but if he open the same, he shall be bound to pay the postage due thereon.

Liability for postage, of receiver of unpaid letters, &c.

If he forthwith return the same unopened, the sender of the letter or other article shall be bound to pay the postage thereof.

Sender when liable.

If any person shall refuse to pay any postage which he is legally bound to pay for any letter or other article, the same may be recovered for the use of the Secretary of State for India by any Post Master General, or by any officer in charge of a post-office by order of a Post Master General, in the same manner as a fine may be recovered under this Act;

Recovery of postage payment of which refused.

and it shall be lawful for the officer in charge of any post-office to withhold from the person so refusing, until such postage be paid, any other letter or other article addressed to that person, not being on Her Majesty's service.

Power to detain other letters to person refusing.

Provided always, that if a letter or other article shall appear to the satisfaction of the Post Master of the office of delivery to have been maliciously sent for the purpose of annoying the person to whom it is addressed, the Post Master of the delivery-office may remit the postage.

Power to remit postage.

**29.** *Clause* 1.—A list of all letters and other articles posted and addressed to persons who cannot be found shall be prepared daily in every post-office, and exposed for not less than two weeks in the most conspicuous part of such office;

List of unclaimed letters.

and all such letters and other articles which shall have remained three weeks unclaimed in any office shall, if the sender's name and address are written on the cover, be returned to the posting-office to be delivered to the sender free of all charge.

Return to posting-office for delivery to sender.

All letters and other articles of which the sender's name and address cannot be ascertained unless they be opened, shall, after remaining unclaimed for three weeks as aforesaid, be forwarded to the office of the Post Master General of the presidency.

Letters of which sender not ascertainable without opening.

*Clause* 2.—The Post Master General or some person duly appointed for the purpose and bound to secrecy, shall immediately open all such letters or other articles, and if the addresses of the senders can be discovered, shall enclose them in dead letter covers, and return them to the senders. All letters and other articles of which neither the person addressed nor the sender can be found, shall, after they have remained unclaimed in the office of the Post Master General for one year, be destroyed.

Opening letters.

Return to sender.

When destroyed.

*Clause* 3.—All money found in any unclaimed letter or other article shall be paid into the public treasury: and all other valuable property found as

Disposal of money and valuables.

above shall be sold by the Post Master General of the presidency or by some one duly authorized by him for that purpose; and the proceeds of the sale shall be paid into the public treasury for the benefit of any person who may have a right thereto, after deducting all sums due from such person for postage.

Refused letters how dealt with.

30. Every letter or other article rejected unopened by the person to whom it is addressed, shall, if any postage is due thereon and if the sender's name and address are written on the cover, be returned to the posting-office, in order that the postage due may be recovered from the sender;

in all other cases, or when the sender's name and address are not on the cover, such letter or other article shall be forthwith sent to the office of the Post Master General of the presidency, who shall open the letter or other article and take measures to recover the postage from the sender, or shall at his discretion destroy the letter or other article;

Disposal of money and valuables.

and all money or other valuable property which such letter or other article may contain, shall be disposed of in the manner prescribed in the preceding section with respect to such money or property contained in unclaimed letters.

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## PART V.

### MAILS ON BOARD INWARD AND OUTWARD-BOUND VESSELS.

Commanders of inward-bound vessels carrying mails how to proceed on arrival.

31. When any vessel arrives by sea at any place within British India at which there is a post-office, the commander of such vessel shall, as speedily as possible, cause every letter, mail-bag, box and packet on board of such vessel which is directed to that place and not excepted from the exclusive privilege of the post-office, to be delivered either at the post-office or to some officer of the post-office authorized to receive the same;

and if there be on board any letter, mail-bag, box or packet, directed to any other place and not excepted from the exclusive privilege aforesaid, the said commander shall as speedily as possible report the same to the post-master of the place at which he has arrived, and shall act according to the directions he may receive from such post-master, and the receipt of such post-master shall discharge such commander from all responsibility in respect of such letter or packet.

Penalty.

Every commander of a vessel who shall wilfully disobey any of the directions contained in this section, shall be punished with a fine not exceeding one thousand rupees.

**32.** Every person being either the commander of a vessel inward-bound or any one on board such vessel, who shall, within British India, knowingly have in his possession any letter not excepted from the privilege of the post-office, after any part of the letters on board the said vessel shall have been sent to the post-office, shall forfeit for every such letter a sum not exceeding fifty rupees, whether the letter be in the baggage or on the person of the offender, or otherwise in his custody ; Penalties for detention of letters on board inward-bound vessel.

and every such person who shall detain any such letter after demand made for the same by an officer of the post-office, shall forfeit for every such letter a sum not exceeding one hundred rupees.

**33.** For every letter delivered by the commander of any ship in conformity with the directions of section 31 of this Act, the officer in charge of the post-office shall pay to the said commander the sum of one anna ; and the sum of one anna shall be chargeable as postage on such letter, in addition to any other postage chargeable thereon under this Act. Bounty-money.

Provided that no payment shall be made to the commander of any vessel on account of the delivery of any letter, unless the claim of such commander shall be preferred before the vessel leaves the place at which the letter was delivered, or before the expiration of two months from the date of the arrival of such vessel. Limitation of claim thereto.

Provided also, that nothing contained in section 31 and the former part of this section of this Act, shall extend to any letter or mail-bag, or box or packet conveyed by any mail-ship or mail-steamer recognized as such by the Governor General of India in Council. Saving of letters, &c., conveyed in mail-ships.

**34.** The commander of every vessel leaving any place in British India by sea, shall receive on board of such vessel every letter and packet which he shall be required so to receive by any officer of the post-office, and shall give a receipt for such letter or packet ; and every commander of a vessel who shall wilfully disobey any direction contained in this section, shall be punished with a fine not exceeding one thousand rupees. Commanders of outward-bound vessels to receive mails on board.

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## PART VI.

### POSTAGE-STAMPS.

**35.** All letters and other articles having a stamp or stamps affixed thereto (such stamp or stamps in every case being affixed on the outside, and being equal in value to the rate or rates of postage to which such letters or other articles are liable under this Act), shall, provided the stamp or stamps shall not have been used before, be considered as prepaid. Stamped letters considered prepaid.

Postage-stamps provided by Government.

**36.** The Governor General of India in Council shall cause postage-stamps to be provided, denoting such values as the said Governor General of India in Council may direct, and shall give such orders, and make such other regulations relative thereto, as may be deemed expedient.[a]

Management of postage-stamps.

**37.** Postage-stamps, provided as aforesaid, shall be under the care and management of such officer or officers as the Governor General of India in Council shall from time to time direct:

Purpose of issue.

postage-stamps shall be considered as stamps issued by Government for the purpose of revenue, within the meaning of the Indian Penal Code; and

Crediting sale-proceeds.

all sums of money realized by the sale of such stamps shall be carried in the public accounts to the credit of the post-office.

Power to make rules for appointment and government of vendors of postage-stamps.

**38.** The Governor General of India in Council may from time to time make rules for the appointment and government of vendors of postage-stamps, and thereby direct how and under what terms and conditions postage stamps may be supplied to them for sale; and whether any and what security shall be given by such vendors; and whether any and what remuneration or discount shall be allowed to them; and how and in what manner, and at what time or times, such vendors shall keep and render their accounts, and pay over the proceeds of any sales made by them, or redeliver the stamps entrusted to them.

Penalty for breach of such rules.

**39.** Government vendors of postage-stamps shall be bound by such rules, and in case of any wilful breach thereof, shall be punished with a fine not exceeding two hundred rupees in addition to any other proceedings to which they may be liable.

Penalty for refusing to supply stamps.

**40.** Any Government vendor of postage-stamps who shall be convicted of refusing, or unnecessarily delaying without reasonable excuse, to furnish postage-stamps to any person desiring to purchase the same, and tendering in lawful currency the full value thereof (the stamp-vendor having in his possession for sale sufficient stamps of the description and value required), shall be punished with a fine not exceeding one hundred rupees.

Penalty for selling stamps for price higher than value denoted.

**41.** Any Government vendor of postage-stamps convicted of taking from a purchaser a higher price than the value denoted on the stamps sold, shall be punished on conviction with imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding six months, or shall be liable to a fine not exceeding one hundred rupees; and shall also be liable to refund to the purchaser the whole amount proved to have been taken in excess, which amount may be recovered by such purchaser before a criminal Court, in the same manner as any penalty under this Act.

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[a] See Financial Department Notification No. 1675, dated 15th March 1869, *Gazette of India*, 20th March 1869, p. 668.

## PART VII.

### Offences against the Post Office.

**42.** No person shall knowingly post, or send, or tender or deliver in order to be sent by the post, any letter, parcel or packet containing any explosive or other dangerous material or substance; and any person contravening this prohibition shall be punished for every such offence with a fine not exceeding two hundred rupees.

Penalty for sending dangerous substance by post.

**43.** Every person who shall, for the purpose of defrauding the post-office revenue, wilfully certify by writing on any official or other letter or packet delivered at any post-office for conveyance by post, that which is not true in respect of such letter or packet, or in respect of the whole of its contents, or shall knowingly send or deliver, or attempt to send or deliver, for conveyance by post, any letter or packet with any such false certificate thereon; and every person who shall knowingly send or permit to be sent by post, under colour or pretence of an official communication, any letter, paper, writing or other enclosure of a private nature,

Making false certificate to defraud post-office.

Sending private letter as official.

shall, for every such offence, be punished with a fine not exceeding five hundred rupees.

Penalty.

**44.** It shall not be lawful for any person, unless acting by express order of the Government, to detain, except for a criminal offence, a post-office messenger whilst carrying the mails, or to detain any carriage or horse upon which the mails are being carried, or on any pretence to open a packet or mail-bag or box in transit from one post-office to another, and every person who shall be guilty of any of the offences mentioned in this section, shall be punished with a fine not exceeding five hundred rupees.

Penalty for detaining mails or opening mail-bags.

**45.** Every person who shall fraudulently retain, or wilfully secrete or make away with, or keep or detain, or, being required to deliver up by an officer of the post-office, shall neglect or refuse to deliver up a post-letter or other article which ought to have been delivered to any other person, or a mail-bag, box or packet containing a letter or other article which shall have been sent by the post, shall be punished, on conviction before a criminal Court, with imprisonment of either description as defined in the Indian Penal Code, for a term not exceeding two years, and shall also be liable to fine.

Penalty for retaining letters, &c., delivered by mistake.

**46.** *Clause* 1.—Every person who shall convey, otherwise than by the post, a letter not excepted from the said exclusive privilege conferred on the Government of India by section 5 of this Act shall, for every letter so conveyed, forfeit a sum not exceeding fifty rupees.

Penalty for conveying letter in breach of privilege.

Penalty for performing, otherwise than by post, services incidental to conveying letters.

*Clause* 2.—Every person who shall perform, otherwise than by the post, any services incidental to conveying letters from place to place, whether by receiving, taking up, ordering, collecting, carrying, tendering or delivering a letter or letters not excepted from the said exclusive privilege, shall forfeit for every such letter a sum not exceeding fifty rupees.

Penalty for making clubbed packet or tendering or delivering letter to be sent therein.

*Clause* 3.—Every person who shall make a collection of letters for the purpose of transmitting them through the post in a clubbed packet, and every person who shall knowingly tender or deliver a letter to be sent in a clubbed packet, shall forfeit for every such letter a sum not exceeding fifty rupees.

Penalty for sending letter in breach of privilege, or delivering letter to be so sent.

*Clause* 4.—Every person who shall send a letter not excepted from the said exclusive privilege, otherwise than by the post, or shall either tender or deliver a letter not so excepted, in order to be sent otherwise than by the post, shall forfeit for every such letter a sum not exceeding fifty rupees.

Penalty for collecting excepted letters to send them otherwise than by post.

*Clause* 5.—Every person who shall make a collection of excepted letters for the purpose of sending them otherwise than by the post, shall forfeit for every such letter a sum not exceeding fifty rupees.

Penalty for breach of provisions of section 6.

*Clause* 6.—Every person who shall carry, receive, tender or deliver a letter, or collect letters contrary to the provisions of section 6 of this Act, shall forfeit for every such letter a sum not exceeding fifty rupees.

Penalty for practice of acts mentioned in section.

*Clause* 7.—Every person who shall be in the practice of committing any of the acts mentioned in this section, shall, for every week during which the practice shall be continued, forfeit a further sum not exceeding five hundred rupees.

Penalty for neglect on part of persons employed to carry mails.

**47.** Every person employed to convey or deliver any mail-bag or box, or any letter or other article, sent by post, who shall be guilty, while so employed, of drunkenness, carelessness or other misconduct, whereby the safety of any such bag, box, or letter or other article shall be endangered; or who shall loiter or make delay in the conveyance or delivery of any such bag, box, letter or other article; or who shall not use proper care and diligence safely to convey or deliver any such bag, letter or other article, shall be liable to a fine not exceeding fifty rupees;

and any person employed to deliver a letter or other article sent by the post, who shall not duly deliver the same, shall, within a reasonable time not exceeding twenty-four hours, report the fact at the post-office where he received such letter or other article, and return the same; and if

any such person shall wilfully make a false report, he shall be liable to a fine not exceeding fifty rupees.

Penalty for stealing, &c., or opening, letters, &c., by persons employed in post-office.

**48.** Whoever, being in the employ of the Government in the Post Office Department, shall steal, fraudulently appropriate, or wilfully secrete, destroy or throw away any letter or other article sent by post, or anything contained in any such letter or other article, or shall mutilate or break open any such letter or other article, or any mail-bag or box, with the intention of fraudulently appropriating anything therein contained, shall be punished, on conviction before a criminal Court, with imprisonment of either description as defined in the Indian Penal Code, for a term not exceeding seven years, and shall also be liable to fine.

Penalty for fraudulently altering marks on letters, &c., by persons employed in post-office.

**49.** Whoever, being in such employ as last aforesaid, shall fraudulently put any wrong mark on any letter or other article, or shall fraudulently alter, remove or cause to disappear any mark or stamp which is on any letter or other article; or shall fraudulently use or place with or upon any letter or other article, any stamp which shall have been removed from any other letter or other article; or, being entrusted with the delivery of any letter or other article, shall knowingly demand or receive any sum of money for the postage thereof other than the sum duly chargeable for such postage, shall be punished, on conviction before a criminal Court, with imprisonment of either description as defined in the Indian Penal Code, for a term not exceeding two years, and shall also be liable to fine.

Penalty for preparing incorrectly, or altering or secreting, documents by persons employed in post-office.

**50.** Whoever, being in such employ as last aforesaid, and being entrusted with the preparing or keeping of any document, shall, with a fraudulent intention, prepare the document incorrectly, or alter that document, or secrete or destroy that document, shall be punished, on conviction before a criminal Court, with imprisonment of either description as defined in the Indian Penal Code, for a term not exceeding two years, and shall also be liable to fine.

Penalty for sending letters on which postage not paid or charged, by persons employed in post-office.

**51.** Whoever, being in such employ as last aforesaid, shall send by the post, or put into any mail-bag or box, any unstamped letter or other article upon which postage has not been paid or charged in the manner prescribed in this Act, intending thereby to defraud the Government of the postage on such letter or other article, shall be punished, on conviction before a criminal Court, with imprisonment of either description as defined in the Indian Penal Code, for a term not exceeding two years, and shall also be liable to fine.

Penalty for abetting or concealing offences under Act.

**52.** Whoever abets, within the meaning of the Indian Penal Code, or conceals, any offence made punishable by this Act, shall be punished with the punishment provided for such offence.

Person charged with offence punishable with fine only may be summarily convicted.

53. Any person, whether a European British subject or not, who shall be guilty of any offence for which according to the provisions of this Act he shall be liable to a fine only, shall be punishable for such offence by any criminal Court upon summary conviction.

Conviction quashed on merits only. Form of conviction.

54. No conviction, order or judgment of any criminal Court, shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order or judgment the evidence on which it proceeds, but the depositions taken or a copy of them shall be returned with the conviction, order or judgment, and if no jurisdiction appears on the face of the conviction, order or judgment, but the depositions taken supply that defect, the conviction, order or judgment shall be aided by what so appears in such depositions.

Powers of Assistant or Deputy Magistrate in trial of charges referred by Magistrate.

55. A Magistrate may refer for trial and decision any charge of an offence hereby made punishable by fine only, to any of his Assistants, or to any Deputy Magistrate lawfully appointed to exercise the powers of a covenanted Assistant, and in such case every such Assistant or Deputy Magistrate may exercise all the powers vested in a Magistrate, subject to all the rules applicable to criminal cases deputed to such Assistants or Magistrates acting judicially.

Fines how levied.

56. All fines imposed under the authority of this Act, for offences punishable by fine only, by any criminal Court or by any Assistant to a Magistrate or Deputy Magistrate, may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of any of the above-named officers.

Detention of offender.

In case any such fine shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress, and such officer may take security by way of recognizance or otherwise.

Imprisonment if no sufficient distress, &c.

If upon the return of such warrant, it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such officer, by the confession of the party or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of money could be levied if a warrant of distress were issued, any such officer, by warrant under his hand, may commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of such officer, for any term not exceeding two calendar months where the amount of the fine shall

not exceed fifty rupees, and for any term not exceeding four calendar months where the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid on payment of the amount.

Share of fine to informer.

**57.** A share not exceeding one moiety of every fine imposed and recovered under this Act, may be awarded to the informer.

No proceedings for recovery of fines taken without order.

**58.** No proceedings shall be taken for the recovery of any fine imposed under the authority of this Act, for offences punishable by fine only, without an order of Government, or an order in writing under the hand of the Director General of the Post Office, or of a Post Master General, or other officer specially invested with the powers of a Post Master General.

Punishment of post-office servants committing offences in allied States.

**59.** If any public servant who shall be employed in the Post Office Department, or shall be appointed a vendor of postage-stamps, or entrusted by the Government of India or any Local Government with the sale of postage-stamps within the dominions of any Foreign Prince or State in India in alliance with Her Majesty, in which a post shall be established by the Government of India, shall, within the dominions of such Prince or State, commit any act hereby prohibited, or omit to do any act hereby required to be done by any person similarly employed, appointed or entrusted as aforesaid within British India, such public servant shall be guilty of an offence, and, on conviction thereof, shall be punished in the same manner as if such act had been done or omitted within British India;

Officers authorized to try them.

and every such person may be tried, convicted and punished, either by fine or otherwise, according to the nature of the offence, by any Court or officer duly empowered by the Governor General of India in Council, to take cognizance of offences committed in such dominions by public servants, or by any Court or Magistrate, or other competent officer in any part of British India, in the same manner as if the offence had been committed in such part.

Letters, &c., suspected to contain contraband articles, or writing in contravention of Act, how dealt with.

**60.** If any officer in charge of a post-office shall suspect that any letter or other article lying for delivery at his office contains any contraband article, or any article on which duty is owing to Government; or that any letter or other article lying for delivery at the post-office contains any writing or enclosure in contravention of the provisions of section 14, 16 or 43 of this Act, it shall be lawful for such officer to summon the person to whom the letter or other article is directed, to attend at the post-office by himself or agent, within forty-eight hours after the arrival thereof at that post-office, and to open the same in the presence of the person to whom it is directed, or of that person's agent, and if that person shall not so attend by himself or agent, then to open it in the absence of that person.

Witnesses to examination of letter.

Provided that if the officer in charge be under the rank of a post-master, he shall call in two respectable persons as witnesses before he shall open a letter or other article in the absence of the person to whom it is addressed.

Delivery of letter to addressee.

Provided also, that in all cases the opened letter or other article shall be subsequently delivered to the person to whom it is addressed, unless it be required for ulterior proceedings, and that the opening of the same and the circumstances connected therewith shall be immediately reported to the Post Master General.

Power to require customs-pass.

It shall also be lawful for any officer in charge of a post-office to refuse to forward any parcel through the post-office by sea to any foreign port, or to any place not on the Continent of India, unless such parcel be accompanied by a custom-house pass.

In charges for offences under Act, property sent by post laid in Post Master General.

Proof of value unnecessary.

Statement that offender employed in post-office sufficient.

**61.** Whenever an offence shall be committed in respect of any mail-bag or box, or any letter or other article sent by the post, it shall be lawful to lay, in the charge to be preferred against the offender, the property of such mail-bag, box, letter or other article in the Post Master General of the presidency; and it shall not be necessary in the charge to allege or to prove upon the trial or otherwise, that such mail-bag, box, letter or other article was of any value; and in any charge to be preferred against any person employed under the post-office for any offence committed against this Act, it shall be lawful to state that such offender was employed under the post-office at the time of committing the offence, without stating further the nature or particulars of his employment.

## PART VIII.

### MISCELLANEOUS.

Letters on Her Majesty's service, duly certified as such, how charged.

**62.** Letters and other articles on Her Majesty's service, certified to be such by the signature of any public officer authorized in that behalf by the Governor General of India in Council, shall be forwarded by the post, and the postage due thereon shall be charged to or recovered from the several public departments to or from which such letters or packets are sent, in such manner as the said Governor General of India in Council shall, from time to time, direct.

Governor General may frame rules.

**63.** It shall be lawful for the Governor General of India in Council from time to time to frame rules for the conduct of the post-office not inconsistent with this Act, and therein to prescribe the regulations, conditions and restrictions according to which all letters and other articles shall be posted, forwarded, conveyed and delivered. [a]

[a] Under this section the transmission of opium by post, except on account of Government, has been prohibited, Financial Department Notification No. 3526, dated 17th September 1869, *Gazette of India*, 18th September 1869, p. 287.

**64.** It shall be lawful for the Governor General of India in Council from time to time to frame rules for the management of all or any zamíndárí, tháná or other district-dáks, and to declare from time to time what portions of this Act shall be applicable to such dáks, and to persons employed in connection therewith. [a] District dáks

**65.** The Government shall not be responsible for any loss or damage which may occur in respect of any thing entrusted to the post-office [b] for conveyance; Government not responsible for loss.

and no person employed by the Government in the Post Office Department shall be responsible for any such loss or damage, unless that person shall cause such loss or damage negligently, maliciously or fraudulently. Responsibility of its servants.

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## ACT No. XXI of 1866.

*Received the Governor General's assent on the 2nd April* 1866.

## An Act to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity. [c]

WHEREAS it is expedient to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity deserted or repudiated, on religious grounds, by their wives or husbands; It is enacted as follows:— Preamble.

**1.** This Act may be cited as "The Native Converts' Marriage Dissolution Act, 1866." Short title.

**2.** [*Repealed by Act No. XVI of* 1874.]

**3.** In this Act— Interpretation-clause.

"Native Husband" shall mean a married man domiciled in British India, who shall have completed the age of sixteen years, and shall not be a Christian, a Muhammadan nor a Jew: "Native Husband."

"Native Wife" shall mean a married woman domiciled in British India, who shall have completed the age of thirteen years, and shall not be a Christian, a Muhammadan nor a Jewess: "Native Wife."

"Native Law" shall mean any law, or custom having the force of law, of any persons domiciled in British India other than Christians, Muhammadans and Jews: "Native Law."

"Month" and "year" shall respectively mean month and year according to the British calendar: "Month" and "year."

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[a] In exercise of this power, the Governor General in Council has declared the following sections applicable to district-dâks throughout India and to the persons employed in connection therewith, namely, 25, 27, 35, 42, 43, 44, 45, 47, 48, 49, 50, 51 and 52, Home Department Notification, No. 1926, dated 25th February 1867, *Gazette of India*, 2nd March 1867, p. 228.

[b] 1 Mad Rep. 202. As to the Government bullock-train, see 3 N. W. P. 195.

[c] Declared to apply to the whole of British India, except the Scheduled Districts, Act No. XV of 1874.

"High Court."

"High Court" shall mean the highest civil Court of appeal in any place to which this Act extends:

Number.

And, unless there be something repugnant in the subject or context, words importing the singular number shall include the plural, and words importing the plural number shall include the singular.

When convert deserted by his wife may sue for conjugal society.

4. If a Native husband change his religion for Christianity, and if in consequence of such change his Native wife, for the space of six continuous months, desert or repudiate him, he may sue her for conjugal society.

When convert deserted by her husband may sue.

5. If a Native wife change her religion for Christianity, and if in consequence of such change her Native husband, for the space of six continuous months, desert or repudiate her, she may sue him for conjugal society.

Court in which suit shall be brought.

6. If the respondent, at the time of commencement of such suit, reside within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature, the suit shall be commenced in such Court: otherwise it shall be commenced in the principal civil Court of original jurisdiction of the district in which the defendant shall reside at the commencement of the suit.

Suit to be commenced by verified petition.

7. The suit shall be commenced by a petition in the form in the first schedule to this Act, or as near thereto as the circumstances of the case will allow.

The statements made in the petition shall be verified by the petitioner in the manner required by law for the verification of plaints; and the petition [a] may be amended by permission of the Court.

On service of petition, citation to respondent.

8. A copy of the petition shall be served upon the respondent, and the Court shall thereupon issue a citation under the seal of the Court and signed by the Judge.

Form of citation.

9. In ordinary cases the citation shall be in the form in the second schedule to this Act, or as near thereto as the circumstances of the case will allow.

But where the respondent is exempt by law from personal appearance in Court, or where the Judge shall so direct, the citation shall be in the form in the third schedule to this Act, or as near thereto as the circumstances of the case will allow.

Service of citation

10. A copy of the citation sealed with the seal of the Court shall be served on the respondent; and the provisions of the Code of Civil Procedure as to the service and endorsement of summonses shall apply, *mutatis mutandis*, to citations under this Act.

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[a] The Court-fee is Rs. 5 see Act No VII of 1870, Schedule II, No. 14

**11.** If the respondent shall not obey such citation, and comply with every other requirement made upon her or him under the provisions of this Act, she or he shall be liable to punishment under section 174 of the Indian Penal Code.

Penalty on respondent not obeying citation.

**12.** On the day fixed in the citation the petitioner shall appear in Court, and the following points shall be proved :—

Points to be proved on appearance of petitioner.

(1.) The identity of the parties :

(2.) The marriage between the petitioner and the respondent :

(3.) That the male party to the suit has completed the age of sixteen years, and that the female party to the suit has completed the age of thirteen years :

(4.) The desertion or repudiation of the petitioner by the respondent :

(5.) That such desertion or repudiation was in consequence of the petitioner's change of religion ;

(6.) And that such desertion or repudiation had continued for the six months immediately before the commencement of the suit.

**13.** The respondent, if such points be proved to the satisfaction of the Judge, shall thereupon be asked whether she or he refuses to cohabit with the petitioner, and, if so, what is the ground of such refusal.

First interrogation of respondent.

In ordinary cases such interrogation and every other interrogation prescribed by this Act shall be made by the Judge ; but when the respondent is exempt by law from personal appearance in Court, or when the Judge shall, in his discretion, excuse the respondent from such appearance, the interrogations shall be made by commissioners acting under such commission as hereinafter mentioned.

**14.** Every interrogation mentioned in this Act and made by the Judge may, at the discretion of the Judge, take place in open Court or in his private room.

Interrogations by Judge may be public or private.

If any such interrogation take place in open Court, the Judge may, so long as it shall continue, exclude from the Court all such persons as he shall think fit to exclude.

**15.** If the respondent be a female, and in answer to the interrogatories of the Judge or commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall make an order adjourning the case for a year, and directing that, in the interim, the parties shall, at such place and time as he shall deem convenient, have an interview of such length as the Judge shall direct, and in the presence

Procedure when female respondent refuses to cohabit with petitioner.

Adjournment for a year.

Interview.

of such person or persons (who may be a female or females) as the Judge shall select, with the view of ascertaining whether or not the respondent freely and voluntarily persists in such refusal.

Procedure on expiration of adjournment.

16. At the expiration of such adjournment the petitioner shall again appear in Court and shall prove that the said desertion or repudiation had continued up to the time last hereinbefore referred to; and if the points mentioned in the twelfth and this section of this Act shall be proved to the satisfaction of the Judge, and if the respondent on being interrogated by the Judge or commissioners, as the case may be, again refuse to cohabit with the petitioner, the respondent shall be taken to have finally deserted or repudiated the petitioner, and the Judge shall, by a decree under his hand and sealed with the seal of his Court, declare that the marriage between the parties is dissolved.

Interrogation of respondent.

Decree.

Decree in case of male respondent refusing to cohabit on ground of petitioner's change of religion.

17. If the respondent be a male, and in answer to the interrogatories of the Judge or commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall adjourn the case for a year.

At the expiration of such adjournment, the petitioner shall again appear in Court; and if the respondent on being interrogated by the Judge or commissioners, as the case may be, again refuse to cohabit with the petitioner, the Judge shall thereupon pass such a decree as last aforesaid:

Proviso.

Provided that, if the petitioner shall so desire (but not otherwise), the proceedings in the suit shall, *mutatis mutandis*, be the same as in the case of a female respondent.

Decree if respondent so refuse in case of unconsummated marriage, either party being *impubes* at time of marriage.

18. Notwithstanding anything hereinbefore contained, if it shall appear at any stage of the suit that both or either of the parties had not attained puberty at the date of their marriage, and that such marriage has not been consummated; and if, in answer to the interrogatories made pursuant to the thirteenth section of this Act, the respondent shall refuse to cohabit with the petitioner, and allege, as the ground for such refusal, that the petitioner has changed his or her religion, the Judge shall thereupon pass such a decree as last aforesaid.

Liberty to parties to marry again.

19. When any decree dissolving a marriage shall have been passed under the provisions of this Act, it shall be as lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death, and the issue of any such remarriage shall be legitimate, any Native law to the contrary notwithstanding.

Provided always that no minister of religion shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved under this Act, or shall be liable to any suit or penalty for refusing to solemnize the marriage of any such person.

Judge to order commission to issue for examination of exempted persons.

20 In suits instituted under this Act, the Judge shall order a commission to issue to such persons, whether males or females or both, as he shall think fit, for the examination on interrogatories or otherwise of any persons so exempt as aforesaid.

The provisions of the Code of Civil Procedure shall, so far as practicable, apply to commissions issued under this section.

Proof of marriage and desertion or repudiation of petitioner in consequence of conversion.

21. At any stage of a suit instituted under this Act, cohabitation as man and wife shall be sufficient presumptive evidence of the marriage of the parties, and proof of the respondent's refusal or voluntary neglect to cohabit with the petitioner, after his or her change of religion and after knowledge thereof by the respondent, shall be sufficient evidence of the respondent's desertion or repudiation of the petitioner, and shall also be sufficient evidence that such desertion or repudiation was in consequence of the petitioner's change of religion, unless some other sufficient cause for such desertion or repudiation be proved by the respondent.

Civil Procedure Code applied.

22. The provisions of the Code of Civil Procedure as to the summoning and examination of witnesses, shall apply in suits instituted under this Act.

Dismissal of suit if either party under age required by Act, or if parties cohabiting, or respondent willing to cohabit.

23. If at any stage of the suit it be proved that the male party to the suit is or was at the institution thereof under the age of sixteen years, or that the female party to the suit is or was at the same time under the age of thirteen years, or that the petitioner and the respondent are cohabiting as man and wife, or if the Court is satisfied by the evidence adduced that the respondent is ready and willing so to cohabit with the petitioner, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

Revival of suit after such dismissal.

24. If at any time within twelve months after a decree dismissing the suit upon any of the grounds mentioned in the last preceding section, the respondent again desert or repudiate the petitioner upon the ground of his or her change of religion, the suit may be revived by summoning the respondent; and upon proof of the former decree and of such renewed repudiation or desertion, the suit shall recommence at the stage at which it had arrived immediately before the passing of such decree; and, after the proofs, interrogations, interview and adjournment which may then be requisite under the provisions hereinbefore contained, the Judge shall pass a decree of the nature mentioned in the sixteenth section of this Act.

Petitioner's cruelty or adultery to bar suit.

**25.** If at any stage of the suit it be proved that the respondent has deserted or repudiated the petitioner solely or partly in consequence of the petitioner's cruelty or adultery, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal. A suit dismissed under this section shall not be revived.

Male petitioner's cohabitation with one of several wives to bar suit.

**26.** If the petitioner, being a male, has at the time of the institution of the suit two or more wives, he shall make them all respondents; and if at any stage of the suit it be proved that he is cohabiting with one of such wives as man and wife, or that any one of such wives is ready and willing so to cohabit with him, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

The provisions as to revival contained in the twenty-fourth section of this Act shall apply, *mutatis mutandis*, to a suit dismissed under this section.

Dissolution of marriage not to affect status or rights of children.

**27.** A dissolution of marriage under the provisions of this Act shall not operate to deprive the respondent's children (if any) by the petitioner of their status as legitimate children, or of any right or interest which they would have had, according to the Native law applicable to them, by way of maintenance, inheritance, or otherwise, in case the marriage had not been so dissolved as aforesaid.

Power to Court to award alimony.

**28.** If a suit be commenced under the provisions of this Act, and it appear to the Court that the wife has not sufficient separate property to enable her to maintain herself suitably to her station in life and to prosecute or defend the suit, the Court may, pending the suit, order the husband to furnish the wife with sufficient funds to enable her to prosecute or defend the suit, and also for her maintenance pending the suit.

If the suit be brought by a husband against a wife, the Court may by the decree order the husband to make such allowance to his wife for her maintenance during the remainder of her life as the Court shall think just, and having regard to the condition and station in life of the parties.

Any allowance so ordered shall cease from the time of any subsequent marriage of the wife.

No appeal under Act; but Judge may state case raising question whether conversion has dissolved marriage.

**29.** No appeal shall lie against any order or decree made or passed by any Court in any suit instituted under this Act; but if, at any stage of the suit, the respondent shall allege by way of defence that the marriage between the parties has been dissolved by the conversion of the petitioner, and that consequently the petitioner is not a Native husband or a Native wife (as the case may be) within the meaning of this Act, the Judge, if he shall entertain any doubt as to the validity of such defence, shall, either of his own motion or

on the application of the respondent, state the case and submit it with his own opinion thereon for the decision of the High Court.

Case to state necessary facts and documents and suit to be stayed.

**30.** Every such case shall concisely set forth such facts and documents as may be necessary to enable the High Court to decide the questions raised thereby; and the suit shall be stayed until the judgment of such Court shall have been received as hereinafter provided.

Case to be decided by three Judges.

**31.** Every such case shall be decided by at least three Judges of the High Court, if such Court be the High Court at any of the presidency towns; and the petitioner and respondent may appear and be heard in the High Court in person or by advocate or vakíl.

High Court may refer case to Judge for additions or alterations.

**32.** If the High Court shall not be satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the High Court may refer the case back to the Judge by whom it was stated, to make such additions thereto or alterations therein as the High Court may direct in that behalf.

High Court may decide question raised, and Judge shall dispose of case accordingly.

**33.** It shall be lawful for the High Court, upon the hearing of any such case, to decide the questions raised thereby, and to deliver its judgment thereon containing the grounds on which such decision is founded;

and it shall send to the Judge by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the registrar, and the Judge shall, on receiving the same, dispose of the case conformably to such judgment.

Saving of Roman Catholic marriages.

**34.** Nothing contained in this Act shall be taken to render invalid any marriage of a Native convert to Roman Catholicism if celebrated in accordance with the rules, rites, ceremonies and customs of the Roman Catholic Church.

Extent of Act.

**35.** This Act shall extend to all the territories that are or shall become vested in Her Majesty or Her successors by the Statute 21 & 22 Vic., cap. 106, entitled "An Act for the better government of India," except the Settlement of Prince of Wales' Island, Singapore and Malacca.

## THE FIRST SCHEDULE.

### Form of Petition.

*Stamp*
*Rs. two.*[a]

To the Judge of the civil Court of

The day of 18 .

The petition of *A. B.* of

Sheweth :—

1. That your petitioner was born on or about the day of 18 .

2. That your petitioner was on the day of in the year 18 lawfully married to *C. D.* at

3. That the said *C. D.* is now of the age of years or thereabouts.

4. That after his said marriage, your petitioner lived and cohabited with his said wife at aforesaid until the day of 18

5. That previous to the day of 18 your petitioner changed his religion for Christianity, and that on such day he was baptised and became a member of the Church of

6. That on the day of 18 [*at least six months prior to the date of the petition*], the said *C. D.* deserted your petitioner, and has not since resumed cohabitation with him.

7. That such desertion was in consequence of your petitioner's said change of religion.

8. That there is no collusion nor connivance between your petitioner and the said *C. D.*

Your petitioner therefore prays that your Honour will order the said *C. D.* to live and cohabit with your petitioner, or declare that your petitioner's marriage is dissolved.

*A. B.*

*Form of verification.*

I, *A. B.*, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

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[a] Read *five*. See Act No. VII of 1870, Schedule II, No. 14.

## THE SECOND SCHEDULE.

### Form of Citation in ordinary Cases.

To *C. D.* of

Whereas *A. B.* of , claiming to have been lawfully married to you the said *C. D.*, has filed his [*or* her] petition against you in the civil Court of , alleging that you the said *C. D.* have deserted him [*or* her] for six months in consequence of his [*or* her] having changed his [*or* her] religion for Christianity, and praying that, unless you consent to live and cohabit with him [*or* her], it may be declared that his [*or* her] marriage is dissolved: Now this is to command you that, at the expiration of days [*at least one month*] from the date of the service of this on you, you do appear in the said Court then and there to make answer to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that in default of your so appearing, you will be liable to punishment under section 174 of the Indian Penal Code.

Dated the day of 18 .

*(Signed)* *E. F.*
Judge of the civil Court of

*Indorsement to be made after service.*

This citation was duly served by *G. H.* on the within-named *C. D.* of at on the day of 18 .

*(Signed)* *G. H.*

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## THE THIRD SCHEDULE.

### Form of Citation in Case of Respondent exempt from Appearance in Court.

To *C. D.* of

Whereas *A. B.* of , claiming to have been lawfully married to you the said *C. D.*, has filed his [*or* her] petition against you in the civil Court of , alleging that you the said *C. D.* have deserted him [*or* her] for six months in consequence of his [*or* her] having changed his [*or* her] religion for Christianity, and praying that, unless you consent to cohabit with him [*or* her], it may be declared that his [*or* her] marriage is dissolved. Now this is to command you that, at the expiration of days [*at least one month*] from the service of this on you, you do hold yourself in readiness to answer and do answer such interrogatories as may be put to you by commis-

sioners duly authorized in that behalf under a commission issued by this Court, in reference to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that in default of your so holding yourself in readiness and answering such interrogatories, you will be liable to punishment under section 174 of the Indian Penal Code.

Dated the day of 18 .

*(Signed)* *E. F.*
Judge of the civil Court of

*Indorsement to be made after service.*

This citation was duly served by *G. H.* on the within named *C. D.* of at on the day of 186 .

*(Signed)* *G. H.*

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## ACT No. XXV OF 1866.

*Received the Governor General's assent on the 11th July 1866.*

### An Act to transfer to the Government of India certain securities and monies deposited in the High Courts of Judicature at Fort William, Madras and Bombay.

Preamble.

WHEREAS it is expedient that certain securities and sums of money deposited in the High Courts of Judicature at Fort William, Madras and Bombay in the course of suits in the said Courts or in the late Supreme Courts at Calcutta, Madras and Bombay, respectively, and now or hereafter appearing to have been in such deposit for a period of twenty years or upwards, without any claim thereto having been made and allowed during that period, should be transferred and paid to the Government of India for the general purposes of government:

Monies deposited in High Courts and unclaimed for twenty years transferred to Government.

1. All securities and sums of money deposited in the said High Courts or any of them, in the course of suits in any of the said Courts or of the late Supreme Courts of Calcutta, Madras and Bombay, and now or hereafter appearing to have been in such deposit for a period of twenty years or upwards, without any claim thereto having been made and allowed during that period, shall be transferred and paid to the Government of India for the general purposes of government.

2. [*Repealed by Act No. XVI of* 1874.]

3. Nothing in this Act shall authorize any transfer or payment of any such securities, sums of money or proceeds as aforesaid, pending any suit already instituted or which shall hereafter be instituted in respect thereof. Transfer not made pending suits.

4. If any claim shall hereafter be made to any part of the securities, monies or proceeds which shall be transferred and paid to the Government of India under the provisions of this Act, and if such claim shall, in the case of securities and monies transferred and paid under the first section of this Act, be established to the satisfaction of the High Court from which the transfer shall have been made, the Government of India shall pay to the claimant the amount of the principal so transferred and paid as aforesaid, or so much thereof as shall appear to be due to the claimant.[a] Repayment on subsequent establishment of claim.

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# THE INDIAN TRUSTEE ACT, 1866.

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## ARRANGEMENT OF SECTIONS.

SECTION.

1. *Repealed.*
2. Interpretation-clause.
3. High Court to have jurisdiction in what cases.
4. High Court may convey estates of lunatic-trustees and mortgagees.
5. And may convey contingent rights.
6. High Court may transfer stock or Government securities of lunatic-trustees and mortgagees.
7. Power to transfer stock or Government securities of deceased persons.
8. High Court may convey estates of minor-trustees and mortgagees.
9. Contingent rights of minor-trustees and mortgagees.
10. High Court may convey estate of trustee out of jurisdiction of Court.
11. High Court may make order where persons hold immoveable property in trust jointly with persons out of jurisdiction.
12. Contingent rights of trustees.
13. High Court may make order where persons jointly entitled with others out of jurisdiction to contingent right in immoveable property.
14. When uncertain which of several trustees survived.
15. When uncertain whether last trustee living or dead.
16. When trustee dies without heir.

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[a] As to the costs of petitions under this section, see Act No. V of 1870.

SECTION.

17. Contingent right of unborn trustee.
18. Power to make order for vesting estate on refusal or neglect of trustee to convey or release.
19. Power to convey in place of mortgagee.
20. Power to appoint person to convey in certain cases.
21. When trustees of stock or Government securities joined with trustees out of jurisdiction.
22. When trustee of stock, &c., refuses to transfer.
23. When one of several trustees of stock, &c., refuses to transfer or receive and pay over dividends.
24. When stock, &c., standing in name of deceased person.
25. Effect of order vesting legal right to transfer stock, &c.
Obligation to comply with requisitions of person invested.
Indemnity.
Termination of powers of person replaced.
26. Effect of order vesting legal right in thing in action.
27. On neglect to transfer stock, &c., for 28 days, order made vesting right to transfer in such person as Court appoints.
28. Similar order on like neglect by executor.
29. Companies and associations to comply with orders.
Powers of person appointed.
Obligation to comply with his requisitions.
30. Power to make order for transfer or receipt of dividends of stock, &c., in name of minor-trustee.
31. When decree made for sale of immoveable property for payment of debts.
32. Holding immoveable property the sale of which has been ordered by High Court.
Order for vesting estate in lieu of conveyance by party to suit in order to carry out sale.
Effect of order.
33. Court to declare what parties are trustees of immoveable property comprised in suit, and as to interests of persons unborn.
34. Power to direct how right to transfer stock shall be exercised.
35. Power to Court to make order appointing new trustees.
Powers of new trustees.
36. Power to Court to vest immoveable property in new trustee.
37. Power to Court to vest right to sue in new trustees.
38. Old trustees not discharged from liability.

SECTION.

39. Who may apply.
40. Application may be by petition.
41. What may be done upon petition.
42. Court may dismiss petition with or without costs.
43. Power to make order in cause.
44. Orders by High Court founded on certain allegations conclusive evidence of matter contained therein.
Powers as to reconveyance of immoveable property, &c.
45. Trustees of charity.
46. Money of minors and persons of unsound mind to be paid into Court.
47. Court may make decree in absence of trustee.
Decree not effective without service of process.
48. Orders under Act chargeable with same stamp-duty as deeds of conveyance.
49. Costs may be paid out of estate.
50. Enquiry concerning person of unsound mind.
Effect of order.
Postponement of order pending enquiry.
51. Suit may be directed.
52. Indemnity to persons obeying orders under Act.
53. Execution and effect of orders.
54. Short title.

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## ACT No. XXVII OF 1866.

*Received the Governor General's assent on the 24th October* 1866.

**An Act to consolidate and amend the law relating to the conveyance and transfer of property in British India vested in Mortgagees and Trustees, in cases to which English law is applicable.**[a]

WHEREAS it is expedient to consolidate and amend the laws relating to the conveyance and transfer of moveable and immoveable property in British India vested in mortgagees and trustees, in cases to which English law is applicable; It is hereby enacted as follows :— Preamble.

1. [*Repealed by Act No. XIV of* 1870.]

[a] This Act applies only to the Lower Provinces, the North-Western Provinces, the Presidencies of Madras and Bombay, and the Panjáb. It is mainly founded on 13 & 14 Vic., c. 60 and 15 & 16 Vic., c. 55.

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context—

"Immoveable property."

"Immoveable property" shall extend to and include messuages, tenements and hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein:

"Stock."

"Stock" shall mean any fund, annuity or security transferable in books kept by any company or society established or to be established, or transferable by deed alone, or by deed accompanied by other formalities, and any share[a] or interest therein. It shall also include shares in ships registered under the Merchant Shipping Act, 1854, or at any port in British India:[b]

"Hold" and Holding."

"Hold" and "Holding" shall be applicable to any vested estate, whether for life or of a greater or less description, in possession, futurity or expectancy, in any immoveable property:

"Contingent right."

"Contingent right" as applied to immoveable property shall mean a contingent or executory interest, or possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be or be not ascertained; also a right of entry, whether immediate or future, and whether vested or contingent:

"Convey." "Conveyance."

"Convey" and "Conveyance" applied to any person, shall mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another immoveable property which such person holds, or in which he is entitled to a contingent right, either for the whole estate of the person conveying or disposing, or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, including the acts to be performed by married women and tenants in tail in accordance with the provisions of Act XXXI of 1854 (*to simplify the modes of conveying land in cases to which the English law is applicable*):

"Transfer."

"Transfer" shall mean the execution and performance of every deed and act by which a person entitled to stock or Government securities can transfer such stock or Government securities from himself to another:

"High Court."

"High Court" shall mean every Court now or hereafter established under the Statute 24 & 25 Vic., cap. 104, and also the Chief Court of the Panjáb, or such one or more Judges of the said Courts respectively as shall be appointed by the Chief Justice or the senior Judge,[c] as the case may be, to entertain applications and make orders under this Act:

"Trust." "Trustee."

"Trust" shall not mean the duties incident to an estate conveyed by way of mortgage; but with this exception, the words "Trust" and "Trustee"

[a] *Re Angelo*, 5 DeG & S. 278. [b] 18 & 19 Vic., c. 91, s. 10

[c] See Act No IV of 1866, s. 3.

shall extend to and include implied and constructive trusts, and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of executor or administrator of a deceased person:

"Lunatic." "Lunatic" shall mean any person who shall have been found by due course of law to be of unsound mind and incapable of managing his affairs:

"Person of unsound mind." "Person of unsound mind" shall mean any person not a minor who, not having been found to be a lunatic, shall be incapable from infirmity of mind to manage his own affairs:

'Heir" and 'Devisee." In the case of a will made or an intestacy occurring before the first day of January 1866,[a] "Heir" shall mean the person claiming an interest in the immoveable property of a deceased person under the laws concerning descent applicable to such property: and "Devisee" shall, in addition to its ordinary signification, mean the heir of a devisee and the devisee of an heir, and generally any person claiming an interest in the immoveable property of a deceased person, not as heir of such deceased person, but by a title dependent solely upon the operation of the laws concerning devise and descent:

In the case of a will made or an intestacy occurring on or after the first day of January 1866,[a] "Heir" shall mean any person claiming an interest in the immoveable property of a deceased person under the rules for the distribution of an intestate's estate; and "Devisee" shall mean any person taking immoveable property under a bequest, and any person, other than an executor or administrator, claiming an interest in immoveable property, not as entitled thereto under the said rules, but by a title dependent solely upon the operation of the laws concerning intestate and testamentary succession:

"Mortgage." "Mortgage" shall be applicable to every estate or interest in immoveable or moveable property which would in the High Court be deemed merely a security for money:

"Person." "Person" shall include any company or association, or body of persons whether incorporated or not:

Number. Gender. Words importing the singular number only shall extend to several persons or things; words importing the plural number shall apply to one person or thing; words importing the masculine gender shall extend to a female.[b]

High Court to have jurisdiction in what cases. **3.** The powers and authorities given by this Act to the High Courts shall and may be exercised only in cases to which English law is applicable, and may be exercised with respect to property within the local limits of the extraordinary original civil jurisdiction of the said Courts respectively.

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[a] The day on which the Indian Succession Act (X of 1865) came into force.
[b] 13 & 14 Vic., c. 60, s. 2.

High Court may convey estates of lunatic-trustees and mortgagees;

4. When any lunatic or person of unsound mind shall hold any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order that such property be vested in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a conveyance of the property in the same manner for the same estate.[a]

and may convey contingent rights,

5. When any lunatic or person of unsound mind shall be entitled to any contingent right in any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said High Court shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a deed so releasing or disposing of the contingent right.[b]

High Court may transfer stock or Government securities of lunatic-trustees and mortgagees.

6. When any lunatic or person of unsound mind shall be solely entitled to any stock or Government securities, or to any thing in action upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order vesting in any person or persons the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof:

and when any person or persons shall be entitled jointly with any lunatic or person of unsound mind to any stock or Government securities, or thing in action, upon any trust or by way of mortgage, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any other person or persons the said High Court may appoint.[c]

Power to transfer stock or Government securities of deceased persons.

7. When any stock or Government securities shall be standing in the name of any deceased person whose executor or administrator is a lunatic or person of unsound mind, or when any thing in action shall be vested in any lunatic or person of unsound mind as the executor or administrator of a deceased person, it shall be lawful for the High Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in any person or persons the said Court may appoint.[d]

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[a] 13 & 14 Vic., c. 60, s. 3.
[b] 13 & 14 Vic., c. 60, s. 4.
[c] 13 & 14 Vic., c. 60, s. 5.
[d] 13 & 14 Vic., c. 60, s. 6.

8. Whenever any minor [a] shall hold any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order vesting such property in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the minor-trustee or mortgagee had attained his majority, and had duly executed a conveyance of the property in the same manner for the same estate. [b]

High Court may convey estates of minor-trustees and mortgagees.

9. Where any minor shall be entitled to any contingent right in any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the minor had attained his majority, and had duly executed a deed so releasing or disposing of the contingent right. [c]

Contingent rights of minor-trustees and mortgagees.

10. When any person solely holding any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct, and the order shall have the same effect as if the trustee had duly executed a conveyance of the property in the same manner and for the same estate. [d]

High Court may convey estate of trustee out of jurisdiction of Court.

11. When any person or persons shall hold any immoveable property in trust jointly with a person not within the jurisdiction of the High Court, or who cannot be found, it shall be lawful for the said Court to make an order vesting the property in the person or persons so jointly holding, or in such last-mentioned person or persons together with any other person or persons, in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance of the property in the same manner for the same estate. [e]

High Court may make order where persons hold immoveable property in trust jointly with persons out of jurisdiction.

12. When any person solely entitled to a contingent right in any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance so releasing or disposing of the contingent right. [f]

Contingent rights of trustees.

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[a] See Act No. IX of 1875.
[b] 13 & 14 Vic., c 60, s. 7.
[c] 13 & 14 Vic., c. 60, s. 8.
[d] 13 & 14 Vic., c. 60, s. 9.
[e] 13 & 14 Vic., c. 60, s. 10.
[f] 13 & 14 Vic., c. 60, s 11.

High Court may make order where persons jointly entitled with others out of jurisdiction to contingent right in immoveable property.

**13.** When any person jointly entitled with any other person or persons to a contingent right in any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order disposing of the contingent right of the person out of the jurisdiction, or who cannot be found, to the person or persons so jointly entitled as aforesaid, or to such last-mentioned person or persons together with any other person or persons; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance so releasing or disposing of the contingent right.[a]

When uncertain which of several trustees survived.

**14.** Where there shall have been two or more persons jointly holding any immoveable property upon any trust, and it shall be uncertain which of such trustees was the survivor, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the survivor of such trustees had duly executed a conveyance of the property in the same manner for the same estate.[b]

When uncertain whether last trustee living or dead.

**15.** Where any one or more person or persons shall have held any immoveable property upon any trust, and it shall not be known, as to the trustee last known to have held such property, whether he be living or dead, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate, as the said Court shall direct; and the order shall have the same effect as if the last trustee had duly executed a conveyance of the property in the same manner for the same estate.[c]

When trustee dies without heir.

**16.** When any person holding any immoveable property upon any trust shall have died intestate as to such property without an heir, or shall have died, and it shall not be known who is his heir or devisee, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate, as the said Court shall direct; and the order shall have the same effect as if the heir or devisee of such trustee had duly executed a conveyance of the property in the same manner for the same estate.[d]

Contingent right of unborn trustee.

**17.** When any immoveable property is subject to a contingent right in an unborn person, or class of unborn persons, who, upon coming into existence, would in respect thereof hold such property upon any trust, it shall be lawful for the High Court to make an order which shall wholly release and discharge such property from such contingent right in such unborn person or class of unborn persons, or to make an order which shall vest in any person or persons

[a] 13 & 14 Vic., c. 60, s. 12.
[b] 13 & 14 Vic., c. 60, s. 13.
[c] 13 & 14 Vic., c. 60, s. 14.
[d] 13 & 14 Vic., c. 60, s. 15.

the estate or estates which such unborn person or class of unborn persons would, upon coming into existence, hold in such property.[a]

Power to make order for vesting estate on refusal or neglect of trustee to convey or release.

**18.** In every case where any person holds or shall hold jointly or solely any immoveable property, or is or shall be entitled to a contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance of such property, or a duly authorized agent of such last-mentioned person, requiring such trustee to convey the same, or to release such contingent right, it shall be lawful for the High Court, if the said Court shall be satisfied that such trustee has wilfully refused or neglected to convey the said property for the space of twenty-eight days after such demand, to make an order vesting such property in such person or persons, in such manner and for such estate, as the Court shall direct, or releasing such contingent right in such manner as the Court shall direct; and the said order shall have the same effect as if the trustee had duly executed a conveyance of the property, or a release of such right, in the same manner and for the same estate.[b]

Power to convey in place of mortgagee

**19.** When any person to whom any immoveable property has been conveyed by way of mortgage, shall have died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same, or such last-mentioned person shall consent to an order for the reconveyance or vesting of such property, then in any of the following cases, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate, as the said Court shall direct, that is to say,—

when an heir or devisee of such mortgagee shall be out of the jurisdiction of the High Court, or cannot be found:

when an heir or devisee of such mortgagee shall, upon a demand by a person entitled to require a conveyance of such property, or a duly authorized agent of such last-mentioned person, have stated in writing that he will not convey the same, or shall not convey the same for the space of twenty-eight days next after a proper deed for conveying such property shall have been tendered to him by a person entitled as aforesaid, or a duly authorized agent of such last-mentioned person:

when it shall be uncertain which of several devisees of such mortgagee was the survivor:

when it shall be uncertain as to the survivor of several devisees of such mortgagee, or as to the heir of such mortgagee, whether he be living or dead:

[a] 13 & 14 Vic., c. 60, s. 16.

[b] 15 & 16 Vic., c. 55, s. 2.

when such mortgagee shall have died intestate as to such property and without an heir, or shall have died, and it shall not be known who is his heir or devisee:

And the order of the said High Court made in any one of the foregoing cases, shall have the same effect as if the heir or devisee, or surviving devisee, as the case may be, had duly executed a conveyance of the property in the same manner and for the same estate.[a]

Power to appoint person to convey in certain cases.

20. In every case where the High Court shall, under the provisions of this Act, be enabled to make an order having the effect of a conveyance of any immoveable property, or having the effect of a release or disposition of the contingent right of any person or persons, born or unborn, it shall also be lawful for the High Court, should it be deemed more convenient, to make an order appointing a person to convey such property, or release or dispose of such contingent right;

and the conveyance, or release or disposition of the person so appointed, shall, when in conformity with the terms of the order by which he is appointed, have the same effect, in conveying the property, or releasing or disposing of the contingent right, as an order of the High Court would in the particular case have had under the provisions of this Act.

In every case where the High Court shall, under the provisions of this Act, be enabled to make an order vesting in any person or persons the right to transfer any stock transferable in the books of any company or society established or to be established, it shall also be lawful for the High Court, if it be deemed more convenient, to make an order directing the secretary or any officer of such company or society at once to transfer or join in transferring the stock to the person or persons to be named in the order:

and this Act shall be a full and complete indemnity and discharge to all companies or societies and their officers and servants for all acts done or permitted to be done pursuant thereto.[b]

When trustees of stock or Government securities joined with trustees out of jurisdiction.

21. When any person or persons shall be jointly entitled with any person out of the jurisdiction of the High Court, or who cannot be found, or concerning whom it shall be uncertain whether he be living or dead, to any stock or Government securities or thing in action upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any person or persons the said Court may appoint.

[a] 13 & 14 Vic., c. 60, s. 19.

[b] 13 & 14 Vic., c. 60, s. 20.

When any sole trustee of any stock, Government securities, or thing in action shall be out of the jurisdiction of the said Court, or cannot be found, or it shall be uncertain whether he be living or dead, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in any person or persons the said Court may appoint.[a]

When trustee of stock, &c., refuses to transfer.

22. Where any sole trustee of any stock, Government securities, or thing in action, shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action, or any interest in respect thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person absolutely entitled thereto, it shall be lawful for the High Court to make an order vesting the sole right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court may appoint.[b]

When one of several trustees of stock, &c., refuses to transfer or receive and pay over dividends.

23. Where any one of the trustees of any stock, Government securities, or thing in action, shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by such person, it shall be lawful for the High Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, in the other trustee or trustees of the said stock, Government securities, or thing in action, or in any person or persons whom the said Court may appoint jointly with such other trustee or trustees.[c]

When stock, &c., standing in name of deceased person.

24. When any stock or Government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall be out of the jurisdiction of the High Court, or cannot be found, or it shall be uncertain whether such executor or administrator be living or dead, or such executor or administrator shall neglect or refuse to transfer such stock or Government securities, or receive the dividends, interest or income thereof, according to the direction of the person absolutely entitled thereto, for the

[a] 13 & 14 Vic., c. 60, s. 22. [b] 13 & 14 Vic., c. 60, s. 23.
[c] 13 & 14 Vic., c. 60, s. 24.

space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, in any person or persons whom the said Court may appoint. [a]

Effect of order vesting legal right to transfer stock, &c.

25. Where any order shall have been made under this Act vesting the right to any stock or Government securities in any person or persons appointed by the High Court, such legal right shall vest accordingly, and thereupon the person or persons so appointed are hereby authorized and empowered to execute all deeds and powers-of-attorney, and to perform all acts relating to the transfer of such stock and Government securities into his or their own name or names or otherwise, or relating to the receipt of the dividends, interest or income thereof, to the extent and in conformity with the terms of such order.

Obligation to comply with requisitions of person invested.

All companies and associations whatever, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, associations or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisition of such person or persons so appointed as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made.

Indemnity.

Termination of powers of person replaced.

After notice in writing of any such order of the High Court concerning any stock or Government securities shall have been given, it shall not be lawful for any company or association, or any person having received such notice, to act upon the requisition of the person in whose place an appointment shall have been made, in any matter relating to the transfer of such stock or Government securities, or the payment of the dividends, interest or income thereof. [b]

Effect of order vesting legal right in thing in action.

26. Where any order shall have been made under this Act by the High Court, vesting the legal right to sue for or recover any thing in action, or any interest in respect thereof, in any person or persons, such legal right shall vest accordingly; and thereupon it shall be lawful for the person or persons so appointed to carry on, commence and prosecute, in his or their own name or names, any suit or other proceeding for the recovery of such thing in action, in the same manner in all respects as the person in whose place an ap-

[a] 13 & 14 Vic., c. 60, s. 25.

[b] 13 & 14 Vic., c. 60, s. 26.

pointment shall have been made could have sued for or recovered such thing in action. [a]

27. Where any person shall neglect or refuse to transfer any stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover any thing in action, or any interest in respect thereof, for the space of twenty-eight days next after an order of the High Court for that purpose shall have been served upon him, it shall be lawful for the said Court to make an order vesting all the right of such person to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court may appoint. [b]

On neglect to transfer stock, &c., for twenty-eight days, order made vesting right to transfer in such person as Court appoints.

28. When any stock or Government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall refuse or neglect to transfer such stock or Government securities, or receive the dividends, interest or income thereof for the space of twenty-eight days next after an order of the High Court for that purpose shall have been served upon him, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, in any person or persons whom the said Court may appoint. [c]

Similar order on like neglect by executor.

29. When any order being or purporting to be under this Act shall be made by the High Court, vesting the right to any stock or Government securities, or vesting the right to transfer any stock or Government securities, or vesting the right to call for the transfer of any stock or Government securities in any person or persons, in every such case the legal right to transfer such stock or Government securities shall vest accordingly;

Legal right to transfer stock to vest in person appointed by High Court.

and the person or persons so appointed shall be authorized and empowered to execute all deeds and powers-of-attorney, and to perform all acts relating to the transfer of such stock or Government securities into his or their own name or names or otherwise, to the extent and in conformity with the terms of the order.

Powers of person appointed.

All companies and associations, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, associations or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made. [d]

Obligation to comply with his requisitions.

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[a] 13 & 14 Vic., c. 60, s. 27.
[b] 15 & 16 Vic., c. 55, s. 4.
[c] 15 & 16 Vic., c. 55, s. 5.
[d] 15 & 16 Vic., c. 55 s. 6.

Power to make order for transfer, or receipt of dividends, of stock, &c., in name of minor-trustee.

**30.** When any minor shall be solely entitled to any stock or Government securities upon any trust, it shall be lawful for the High Court to make an order vesting in any person or persons the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof.

When any minor shall be entitled jointly with any other person or persons to any stock or Government securities upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, either in the person or persons jointly entitled with the minor, or in him or them together with any other person or persons the said Court may appoint.[a]

When decree made for sale of immoveable property for payment of debts.

**31.** When a decree or order shall have been made by the High Court directing the sale of any immoveable property for the payment of the debts of a deceased person, every person holding such property, or entitled to a contingent right therein, as heir, or under the will of such deceased debtor, shall be deemed so to hold or be entitled (as the case may be) upon a trust within the meaning of this Act :

and the High Court is hereby empowered to make an order wholly discharging the contingent right, under the will of such deceased debtor, of any unborn person.[b]

Holding immoveable property the sale of which has been ordered by High Court.

**32.** When any decree or order shall have been made by the High Court, whether before or after the passing of this Act, directing the sale of any immoveable property for any purpose whatever, every person holding such property, or entitled to a contingent right therein, being a party to the suit or proceeding in which such decree or order shall have been made, and bound thereby, or being otherwise bound by such decree or order, shall be deemed so to hold or be entitled (as the case may be) upon a trust within the meaning of this Act.

Order for vesting estate in lieu of conveyance by party to suit in order to carry out sale.

In every such case, it shall be lawful for the High Court, if the said Court shall think it expedient for the purpose of carrying such sale into effect, to make an order vesting such property or any part thereof, for such estate as the Court shall think fit, either in any purchaser or in such other person as the Court shall direct.

Effect of order.

Every such order shall have the same effect as if the person so holding or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such property for such estate.[c]

Court to declare what parties are

**33.** Where any decree or order shall be made by the High Court for the specific performance of a contract concerning any immoveable property, or for

[a] 15 & 16 Vic., c. 55, s. 3. [b] 13 & 14 Vic., c. 60, s. 29.

[c] 15 & 16 Vic., c. 55, s. 1.

the partition or exchange of any immoveable property, or generally when any decree shall be made for the conveyance of any immoveable property, either in cases arising out of the doctrine of election or otherwise, it shall be lawful for the said Court to declare that any of the parties to the said suit wherein such decree is made are trustees of such property, or any part thereof, within the meaning of this Act, or to declare concerning the interests of unborn persons who might claim under any party to the said suit, or under the will or voluntary settlement of any person deceased who was during his life-time a party to the contract or transactions concerning which such decree is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees within the meaning of this Act.

trustees of immoveable property comprised in suit, and as to interests of persons unborn.

Thereupon it shall be lawful for the High Court to make such order or orders as to the estates, rights and interests of such persons, born or unborn, as the said Court might, under the provisions of this Act, make concerning the estates, rights and interests of trustees born or unborn.[a]

**34.** It shall be lawful for the High Court to make declarations and give directions concerning the manner in which the right to any stock, Government securities or thing in action vested under the provisions of this Act shall be exercised, and thereupon the person or persons in whom such right shall be vested shall be compellable to obey such directions and declarations by the same process as that by which other orders under this Act are enforced.[b]

Power to direct how right to transfer stock shall be exercised.

**35.** In all cases in which it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult or impracticable so to do without the assistance of the High Court, it shall be lawful for the said Court to make an order appointing a new trustee or new trustees, whether there be any existing trustee or trustees or not at the time of making such order, and if there be such trustee or trustees, either in substitution for or in addition to him or them.[c]

Power to Court to make order appointing new trustees.

The person or persons who, upon the making of such order shall be trustee or trustees, shall have the same rights and powers as he or they would have had if appointed by decree in a suit duly instituted.[d]

Powers of new trustees.

**36.** It shall be lawful for the High Court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to direct that any immoveable property subject to the trust shall vest in the person or persons who upon the appointment shall be the trustee or trustees, for such estate as the Court shall direct.

Power to Court to vest immoveable property in new trustee.

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[a] 13 & 14 Vic., c. 60, s. 30.
[b] 13 & 14 Vic., c. 60, s. 31.
[c] 13 & 14 Vic., c. 60, s. 32.
[d] 13 & 14 Vic., c. 60, s. 33.

Such order shall have the same effect as if the person or persons who, before such order, was or were the trustee or trustees (if any) had duly executed all proper conveyances of such property for such estate.

Power to Court to vest right to sue in new trustees.

**37.** It shall be lawful for the High Court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to vest the right to call for a transfer of any stock or Government securities subject to the trust, or to receive the dividends, interest or income thereof, or to sue for or recover any thing in action subject to the trust, or any interest in respect thereof, in the person or persons who upon the appointment shall be the trustee or trustees.[a]

Old trustees not discharged from liability.

**38.** Any such appointment by the High Court of new trustees, and any such conveyance or transfer as aforesaid, shall operate no further or otherwise as a discharge to any former or continuing trustee, than an appointment of new trustees under any power for that purpose contained in any instrument would have done.[b]

Who may apply.

**39.** An order under any of the hereinbefore contained provisions, for the appointment of a new trustee or new trustees, or concerning any immoveable property, stock or Government securities, or thing in action subject to a trust, may be made upon the application of any person beneficially interested in such immoveable property, stock, Government securities or thing in action, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof; and an order under any of the provisions hereinbefore contained, concerning any immoveable property, stock, Government securities or thing in action subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the monies secured by such mortgage.[c]

Application may be by petition.

**40.** When any person shall deem himself entitled to an order under any of the provisions hereinbefore contained, it shall be lawful for him to present a petition to the High Court for such order as he may deem himself entitled to, and he may give evidence by affidavit or otherwise in support of such petition before the said Court, and may serve such person or persons with notice of such petition as he may deem entitled to service thereof.[d]

What may be done upon petition.

**41.** Upon the hearing of any such petition, it shall be lawful for the said High Court, should it be deemed necessary, to direct a reference to one of the Judges of the Court to inquire into any facts which require such an investigation, or it shall be lawful for the said Court to direct such petition to stand

[a] 13 & 14 Vic., c. 60, s. 34.
[b] 13 & 14 Vic., c. 60, s. 36.
[c] 13 & 14 Vic., c. 60, s. 37.
[d] 13 & 14 Vic., c. 60, s. 40.

over, to enable the petitioner to adduce evidence or further evidence before the Court, or to enable notice or any further notice of such petition to be served upon any person or persons.[a]

Court may dismiss petition with or without costs.

**42.** Upon the hearing of any such petition, it shall be lawful for the High Court to dismiss such petition with or without costs, or to make an order thereupon in conformity with the provisions of this Act.[b]

Power to make order in cause.

**43.** Whensoever in any cause or matter, either by the evidence adduced therein, or by the admissions of the parties, or by report of one of the Judges of the Court, the facts necessary for an order under this Act shall appear to the High Court to be sufficiently proved, it shall be lawful for the said Court, either upon the hearing of the said cause or of any petition or application in the said cause or matter, to make such order under this Act.[c]

Orders by High Court founded on certain allegations conclusive evidence of matter contained therein.

**44.** Whenever any order shall be made under this Act by the High Court, for the purpose of conveying any immoveable property, or for the purpose of releasing or disposing of any contingent right, and such order shall be founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or devisee of a mortgagee is out of the jurisdiction of the High Court, or cannot be found, or that it is uncertain which of several trustees, or which of several devisees of a mortgagee, was the survivor, or whether the last trustee, or the heir, or last surviving devisee of a mortgagee, be living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died and it is not known who is his heir or devisee, then in any of such cases the fact that the High Court has made an order upon such an allegation, shall be conclusive evidence of the matter so alleged in any Court of Civil Judicature upon any question as to the legal validity of the order:

Powers as to reconveyance of immoveable property &c.

Provided always, that nothing herein contained shall prevent the High Court directing a reconveyance of any immoveable property conveyed or assigned by any order under this Act, or a redisposition of any contingent right conveyed or disposed of by such order; and it shall be lawful for the said Court to direct any of the parties to any suit concerning such property or contingent right, to pay any costs occasioned by the order under this Act, when the same shall appear to have been improperly obtained.[d]

Trustee of charity.

**45.** It shall be lawful for the High Court to exercise the powers herein conferred for the purpose of vesting any immoveable property, stock, Government securities or thing in action in the trustee or trustees of any charity or society, over which charity or society the High Court would have jurisdiction

[a] 13 & 14 Vic., c. 60, s. 41.
[b] 13 & 14 Vic., c. 60, s. 42.
[c] 13 & 14 Vic., c. 60, s. 43.
[d] 13 & 14 Vic., c. 60, s. 44.

upon suit duly instituted, whether such trustee or trustees shall have been duly appointed by any power contained in any deed or instrument, or by the decree of the said Court, or by order made upon a petition to the said Court. [a]

Money of minors and persons of unsound mind to be paid into Court.

46. Where any minor or person of unsound mind shall be entitled to any money payable in discharge of any immoveable property, stock, Government securities or thing in action conveyed or transferred under this Act, it shall be lawful for the person by whom such money is payable to pay the same into the High Court, in trust in any cause then depending concerning such money, or if there shall be no such cause, to the credit of such minor or person of unsound mind, subject to the order or disposition of the said Court;

and it shall be lawful for the said Court, upon petition in a summary way, to order any money so paid to be invested in Government securities, and to order payment or distribution thereof, or payment of the dividends or interest thereof, as to the said Court shall seem reasonable. [b]

Court may make decree in absence of trustee.

47. Where in any suit commenced or to be commenced in the High Court, it shall be made to appear to the Court that diligent search and enquiry have been made after any person made a defendant, who is only a trustee, to serve him with the process of the Court, and that he cannot be found, it shall be lawful for the said Court to hear and determine such cause, and to make such absolute decree therein against every person who shall appear to it to be only a trustee, and not otherwise concerned in interest in the matter in question, in such and the same manner as if such trustee had been duly served with the process of the Court, and had appeared at the hearing of such cause:

Decree not effective without service of process.

Provided always, that no such decree shall bind, affect, or in any wise prejudice any person against whom the same shall be made, without service of process upon him as aforesaid, his heirs, executors or administrators for or in respect of any estate, right or interest which such person shall have at the time of making such decree for his own use or benefit, or otherwise than as a trustee as aforesaid. [c]

Orders under Act chargeable with same stamp-duty as deeds of conveyance.

48. Every order to be made under this Act, which shall have the effect of a conveyance of any immoveable property, or a transfer of any such stock, Government securities, or thing in action as can only be transferred by stamped deed, or for the transfer of which a stamp is necessary, shall be chargeable with the like amount of stamp-duty as it would have been chargeable with if it had been a deed executed or a transfer made by the person or persons holding such property or entitled to such stock, Government securities, or thing in action.

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[a] 13 & 14 Vic., c. 60, s. 45. [b] 13 & 14 Vic., c. 60, s. 47.
[c] 13 & 14 Vic., c. 60, s. 49.

Every such order shall be duly stamped for denoting the payment of the said duty. [a]

Costs may be paid out of estate.

**49.** The High Court may order the costs and expenses of and relating to the petitions, orders, directions, conveyances and transfers to be made in pursuance of this Act, or any of them, to be paid and raised out of or from the immoveable or moveable property, or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said Court shall think proper. [b]

Power to order enquiry concerning person of unsound mind.

**50.** Upon any petition being presented under this Act to the High Court concerning a person of unsound mind, it shall be lawful for the said Court to make an order directing an enquiry whether such person is or is not of unsound mind, and incapable of managing himself and his affairs.

Effect of order.

Such order shall have the same effect as the like order made under section 1 of Act XXXIV of 1858 (*to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter*), and the enquiry directed to be made shall be made in all respects in the manner declared and prescribed for making an enquiry under the last-mentioned Act.

Postponement of order pending enquiry.

The High Court may postpone making any order upon the petition presented as aforesaid, until any enquiry so directed to be made shall have been finally concluded. [c]

Suit may be directed.

**51.** Upon any petition under this Act being presented to the High Court, it shall be lawful for the said Court to postpone making any order upon such petition, until the right of the petitioner shall have been declared in a suit duly instituted for that purpose. [d]

Indemnity to persons obeying orders under Act.

**52.** Every order made or purporting to be made under this Act by the High Court shall be a complete indemnity to all persons whatsoever for any act done pursuant thereto; and it shall not be necessary for such persons to enquire concerning the propriety of such order, or whether the High Court has jurisdiction to make the same. [e]

Execution and effect of orders.

**53.** Any order made by the High Court under this Act shall have the same effect and be executed in the same manner as a decree.

Short title.

**54.** This Act may be cited as "The Indian Trustee Act, 1866."

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[a] 15 & 16 Vic., c. 55, s. 13.

[b] 13 & 14 Vic., c. 60, s. 51.

[c] 13 & 14 Vic., c. 60, s. 52.

[d] 13 & 14 Vic., c. 60, s. 53.

[e] 15 & 16 Vic., c. 55, s. 7.

# THE TRUSTEES AND MORTGAGEES' POWERS ACT, 1866.

## ARRANGEMENT OF SECTIONS.

PREAMBLE.

SECTION.

1. Interpretation-clause.

*Powers of Trustees for Sale, &c., and Trustees of renewable Leaseholds.*

2. Trustees empowered to sell, may sell in lots, and either by public auction or private contract.
3. Sale may be made under special conditions, and trustees may buy-in, &c.
4. Trustees exercising power of sale, &c., empowered to convey.
5. Money arising from sales, to be laid out in manner indicated in will, &c.

   Until so laid out, money to be invested in Government securities.

*Powers of Mortgagees.*

6. Powers incident to mortgages.
7. Receipts for purchase-money sufficient discharges.
8. Notice to be given before sale; but purchaser relieved from inquiry as to circumstances of sale.
9. Application of purchase-money.
10. Conveyance to purchaser.
11. Owner of charge may call for title-deeds and conveyance of legal estate.
12. Appointment of receiver.
13. Receiver deemed agent of mortgagor.
14. Powers of receiver.
15. Receiver may be removed.
16. Receiver to receive commission not exceeding five per cent.
17. Receiver to insure, if required.
18. Application of moneys received by him.
19. This Part to relate to charges by way of mortgage only.

SECTION.

*Leases.*

20. Restriction on effect of license to alien.
21. Restricted operation of partial licenses.
22. Apportionment of conditions of re-entry in certain cases.

*Rent-charges.*

23. Release of part of land charged, not an extinguishment.

*Powers.*

24. Mode of execution of powers.
25. Legatee in trust may raise money by sale, notwithstanding want of express power in will.
26. Powers given by last section extended to survivors, legatees, &c.
27. Executors to have power of raising money, &c., where no sufficient bequest.
28. Purchasers, &c., not bound to enquire as to powers.

*Inheritance.*

29. Descent how traced.

*Assignment of Moveables and Terms for Years.*

30. Assignment to self and others.

*Purchasers.*

31. Not bound to see to application of purchase-money, &c.

*Investment of Trust-funds.*

32. On what securities trust-funds may be invested.

*Trustees and Executors.*

33. Trustees may apply income of property of minors, &c., for their maintenance.
34. Provisions for appointment of new trustees, on death, &c.
Transfer of trust-property to new trustees.
Powers, &c., of new trustees.
Appointment of Official Trustee to be a trustee.
35. Appointment of new trustee in place of trustee predeceasing testator.
36. Trustees' receipts to be discharges.
37. Every trust-instrument deemed to contain clauses for indemnity and reimbursement of trustees.

SECTION.

38. Executors may compound, &c.
39. Trustee, &c., making payment under power-of-attorney, not liable by reason of death of party giving power.
40. As to liability of executor or administrator in respect of rents, covenants or agreements.
41. As to liability of executor, &c., in respect of rents, &c., in conveyance on rent-charge.
42. As to distribution of assets of testator or intestate after notice given by executor and administrator.
43. Trustee, executor, &c., may apply by petition to Judge of High Court for opinion, advice, &c., in management, &c., of trust-property.

*General Provisions.*

44. Tenants for life, &c., may execute powers, notwithstanding incumbrances.
45. Operation of Act.
46. Short title.

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## ACT No. XXVIII OF 1866.

*Received the Governor General's assent on the 24th October* 1866.

An Act to give Trustees, Mortgagees and others, in cases to which English Law is applicable, certain powers now commonly inserted in Settlements, Mortgages and Wills, and to amend the Law of property and relieve Trustees.[a]

Preamble.

WHEREAS it is expedient that in cases to which English law is applicable, certain powers and provisions usually inserted in settlements, mortgages, wills and other instruments, should be made incident to the estates of the persons interested, so as to dispense with the necessity of inserting the same in terms in every such instrument, and that in such cases trustees should be relieved; It is enacted as follows :—

Interpretation-clause.

1. In the construction of this Act, unless there be something repugnant in the subject or context—

"Immoveable property."

"Immoveable property" shall include land, any benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth :

[a] Declared to apply to the whole of British India, except the Scheduled Districts, Act No. XV of 1874. Founded on 22 & 23 Vic., c. 35 and 23 & 24 Vic., c. 145.

"Mortgage" shall be taken to include every instrument by virtue whereof immoveable property is in any manner conveyed, pledged or charged as security for the repayment of money or money's worth lent, and to be reconveyed or released on satisfaction of the debt: "Mortgage."

"Mortgagor" shall be taken to include every person by whom any such conveyance, pledge or charge as aforesaid shall be made: "Mortgagor."

"Mortgagee" shall be taken to include every person to whom or in whose favour any such conveyance, pledge or charge as aforesaid is made or transferred: and "Mortgagee."

"High Court" means any Court established or to be established under Statute 24 & 25 Vic., cap. 104, and includes the Chief Court of the Panjáb. "High Court."

*Powers of Trustees for Sale, &c., and Trustees of renewable Leaseholds.*

Trustees empowered to sell, may sell in lots, and either by public auction or private contract.

2. In all cases where, by any will, deed or other instrument of settlement, it is expressly declared that trustees or other persons therein named or indicated shall have a power of sale, either generally or in any particular event, over any immoveable property named or referred to in, or from time to time subject to, the uses or trusts of such will, deed or other instrument, it shall be lawful for such trustees or other persons, whether such property be vested in them or not, to exercise such power of sale by selling such property either together or in lots, and either by public auction or private contract, and either at one time or at several times.[a]

Sale may be made under special conditions, and trustees may buy-in, &c.

3. It shall be lawful for the persons making any such sale to insert any such special or other stipulations, either as to title or evidence of title, or otherwise, in any conditions of sale, or contract for sale, as they shall think fit; and also to buy-in the property or any part thereof at any sale by auction, and to rescind or vary any contract for sale, and to resell the property which shall be so bought in, or as to which the contract shall be so rescinded, without being responsible for any loss which may be occasioned thereby;

and no purchaser under any such sale shall be bound to enquire whether the persons making the same may or may not have in contemplation any particular reinvestment of the purchase-money in the purchase of any other property or otherwise.[b]

Trustees exercising power of sale, &c., empowered to convey.

4. For the purpose of completing any such sale as aforesaid, the persons empowered to sell as aforesaid shall have full power to convey or otherwise dispose of the property in question, in such manner as may be necessary.[c]

Money arising from sales, to be laid out in manner indicated in will, &c.

5. The money so received upon any such sale as aforesaid shall be laid out in the manner indicated in that behalf in the will, deed or instrument containing the power of sale;

[a] 23 & 24 Vic., c. 145, s. 1. [b] 23 & 24 Vic., c. 145, s. 2. [c] 23 & 24 Vic., c. 145, s. 3.

Until so laid out, money to be invested in Government securities.

and until the money to be received upon any sale as aforesaid shall be so disposed of, the same shall be invested at interest in Government securities for the benefit of such persons as would be entitled to the benefit of the money, and the interest and profits thereof, in case such money were then actually laid out as aforesaid:

Provided that if the will, deed or instrument shall contain no such indication, the persons empowered to sell as aforesaid shall invest the money so received upon any such sale in their names upon Government securities in India, and the interest of such securities shall be paid and applied to such person or persons for such purposes and in such manner as the rents and profits of the property sold as aforesaid would have been payable or applicable in case such sale had not been made.[a]

*Powers of Mortgagees.*

Powers incident to mortgages.

6. Where any principal-money is secured or charged by deed on any immoveable property, or on any interest therein, the person to whom such money shall for the time being be payable, his executors, administrators and assigns, shall, at any time after the expiration of one year from the time when such principal-money shall have become payable, according to the terms of the deed, or after any interest on such principal-money shall have been in arrear for six months, or after any omission to pay any premium on any insurance which by the terms of the deed ought to be paid by the person entitled to the property subject to the charge, have the following powers to the same extent (but no more) as if they had been in terms conferred by the person creating the charge, namely:—

1*st*, a power to sell or concur with any other person in selling the whole or any part of the property by public auction or private contract, subject to any reasonable conditions he may think fit to make, and to rescind or vary contracts for sale, or buy-in and resell the property, from time to time, in like manner:

2*nd*, a power to appoint or obtain the appointment of a receiver of the rents and profits of the whole or any part of the property in manner hereinafter mentioned.[b]

Receipts for purchase-money sufficient discharges.

7. Receipts for purchase-money given by the person or persons exercising the power of sale hereby conferred, shall be sufficient discharges to the purchasers, who shall not be bound to see to the application of such purchase-money.[c]

Notice to be given before sale;

8. No such sale as last aforesaid shall be made until after six months' notice in writing given to the person or one of the persons entitled to the

[a] 23 & 24 Vic., c. 145, s. 4. [b] 23 & 24 Vic., c. 145, s. 11. [c] 23 & 24 Vic., c. 145, s. 12.

property subject to the charge, or affixed on some conspicuous part of such property;

but when a sale has been effected in professed exercise of the powers hereby conferred, the title of the purchaser shall not be liable to be impeached on the ground that no case had arisen to authorize the exercise of such power, or that no such notice as aforesaid had been given; but any person damnified by any such unauthorized exercise of such power, shall have his remedy in damages against the person or persons selling.[a]

but purchaser relieved from inquiry as to circumstances of sale.

9. The money arising by any sale effected as aforesaid shall be applied by the person receiving the same as follows:—

Application of purchase-money.

first, in payment of all the expenses incident to the sale or incurred in any attempted sale;

secondly, in discharge of all interest and costs then due in respect of the charge in consequence whereof the sale was made; and

thirdly, in discharge of all the principal-monies then due in respect of such charge;

and the residue of such money shall be paid to the person entitled to the property subject to the charge, his executors, administrators or assigns, as the case may be.[b]

10. The person exercising the power of sale hereby conferred shall have power by deed to convey or assign to and vest in the purchaser the property sold, for all the estate and interest therein which the person who created the charge had power to dispose of:

Conveyance to purchaser

Provided that nothing herein contained shall be construed to authorize the mortgagee of a term of years to sell and convey the fee simple of the property comprised therein in cases where the mortgagor could have disposed of such fee simple at the date of the mortgage.[c]

11. At any time after the power of sale hereby conferred shall have become exerciseable, the person entitled to exercise the same shall be entitled to demand and recover from the person entitled to the property subject to the charge, all the deeds and documents in his possession or power relating to the same property, or to the title thereto, which he would have been entitled to demand and recover if the same property had been conveyed, appointed or surrendered to and were then vested in him for all the estate and interest which the person creating the charge had power to dispose of;

Owner of charge may call for title-deeds and conveyance of legal estate.

and where the legal estate shall be outstanding in a trustee, the person entitled to a charge created by a person equitably entitled, or any purchaser

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a 23 & 24 Vic., c. 145, s. 13. b 23 & 24 Vic., c. 145, s. 14. c 23 & 24 Vic., c. 145, s. 15.

from such person, shall be entitled to call for a conveyance of the legal estate to the same extent as the person creating the charge could have called for such a conveyance if the charge had not been made.[a]

Appointment of receiver.

12. Any person entitled to appoint or obtain the appointment of a receiver as aforesaid, may from time to time, if any person or persons has or have been named in the deed of charge for that purpose, appoint such person or any one of such persons to be receiver, or if no person be so named, then may, by writing delivered to the person or any one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of the property, require such last-mentioned person or persons to appoint a fit and proper person as receiver, and if no such appointment be made within ten days after such requisition, then may in writing appoint any person he may think fit.[b]

No person shall be ineligible for the office of receiver merely because he is an officer of the High Court.

Receiver deemed agent of mortgagor.

13. Every receiver appointed as aforesaid shall be deemed to be the agent of the person entitled to the property subject to the charge, who shall be solely responsible for his acts or defaults, unless otherwise provided for in the charge.[c]

Powers of receiver.

14. Every receiver appointed as aforesaid shall have power to demand and recover and give effectual receipts for all the rents, issues and profits of the property of which he is appointed receiver, by suit, distress or otherwise, in the name either of the person entitled to the property subject to the charge, or of the person entitled to the money secured by the charge, to the full extent of the estate or interest which the person who created the charge had power to dispose of.[d]

Receiver may be removed, and new receivers appointed.

15. Every receiver appointed as aforesaid may be removed by the like authority, or on the like requisition as before provided with respect to the original appointment of a receiver, and new receivers may be appointed from time to time.[e]

Receiver to receive commission not exceeding five per cent.

16. Every receiver appointed as aforesaid shall be entitled to retain out of any money received by him, in lieu of all costs, charges and expenses whatsoever, such a commission, not exceeding five *per centum* on the gross amount of all money received, as shall be specified in his appointment, and if no amount shall be so specified, then five *per centum* on such gross amount.[f]

Receiver to insure if required.

17. Every receiver appointed as aforesaid shall, if so directed in writing by the person entitled to the money secured by the charge, insure and keep

[a] 23 & 24 Vic., c. 145, s. 16.
[b] 23 & 24 Vic., c. 145, s. 17.
[c] 23 & 24 Vic., c. 145, s. 18.
[d] 23 & 24 Vic., c. 145, s. 19.
[e] 23 & 24 Vic., c. 145, s. 20.
[f] 23 & 24 Vic. c. 145, s. 21.

insured from loss or damage by fire, out of the money received by him, the whole or any part of the property included in the charge which is in its nature insurable.[a]

Application of moneys received by him.

**18.** Every receiver appointed as aforesaid shall pay and apply all the money received by him in the first place in discharge of Government revenue and of all taxes, rates and assessments whatsoever, and in payment of his commission as aforesaid, and of the premiums on the insurances, if any; and in the next place in payment of all the interest accruing due in respect of any principal-money then charged on the property over which he is receiver, or on any part thereof; and, subject as aforesaid, shall pay all the residue of such money to the person for the time being entitled to the property subject to the charge, his executors, administrators or assigns.[b]

This Part to relate to charges by way of mortgage only.

**19.** The powers and provisions contained in sections 6 to 18 of this Act, both inclusive, relate only to mortgages or charges made to secure money advanced or to be advanced by way of loan, or to secure an existing or future debt.[c]

*Leases.*

Restriction on effect of license to alien.

**20.** Where any license to do any act which without such license would create a forfeiture, or give a right to re-enter, under a condition or power reserved in any lease heretofore granted, or to be hereafter granted, shall, at any time after this Act comes into operation, be given to any lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant made or to be made, or to the actual assignment, under-lease or other matter thereby specifically authorized to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such license);

and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease or other matter not specifically authorized or made dispunishable by such license, in the same manner as if no such license had been given; and the condition or right of re-entry shall be and remain in all respects as if such license had not been given, except in respect of the particular matter authorized to be done.[d]

Restricted operation of partial licens-

**21.** Where in any lease heretofore granted or to be hereafter granted, there is or shall be a power or condition of re-entry on assigning or under-

[a] 23 & 24 Vic., c. 145, s. 22. [b] 23 & 24 Vic., c. 145, s. 23. [c] 23 & 24 Vic., c. 145, s. 24.
[d] 22 & 23 Vic., c. 35, s. 1.

letting, or doing any other specified act without license, and a license at any time after the passing of this Act shall be given to one of several lessees or co-owners to assign or under-let his share or interest, or to do any other act prohibited to be done without license; or shall be given to any lessee or owner, or any one of several lessees or owners, to assign or under-let part only of the property, or to do any other such act as aforesaid in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees, or owner or owners, of the other shares or interests in the property, or by the lessee or owner of the rest of the property (as the case may be) over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license.[a]

Apportionment of conditions of re-entry in certain cases.

**22.** Where the reversion upon a lease is severed, and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.[b]

*Rent-charges.*

Release of part of land charged, not an extinguishment.

**23.** The release from a rent-charge of part of the immoveable property charged therewith shall not extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of the rent-charge out of the property released, without prejudice nevertheless to the rights of all persons interested in the property remaining unreleased, and not concurring in or confirming the release.[c]

*Powers.*

Mode of execution of powers.

**24.** A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary, notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power

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[a] 22 & 23 Vic., c 35, s. 2. [b] 22 & 23 Vic., c. 35, s. 3. [c] 22 & 23 Vic., c. 35, s. 10.

should be executed or attested with some additional or other form of execution or attestation or solemnity:

Provided always, that this provision shall not operate to defeat any direction in the instrument creating the power, that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the instrument:

and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend.[a]

Legatee in trust may raise money by sale, notwithstanding want of express power in will.

**25.** Where by any will which shall come into operation after the passing of this Act, the testator shall have charged his immoveable property or any specific portion thereof with the payment of his debts, or with the payment of any legacy or other specific sum of money, and shall have bequeathed the property so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy or sum of money out of such property, it shall be lawful for the said legatee or legatees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy or money as aforesaid by sale and absolute disposition by public auction or private contract, of the said property or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other;

and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper.[b]

Powers given by last section extended to survivors, legatees, &c.

**26.** The powers conferred by the last preceding section shall extend to all and every person or persons in whom the property bequeathed in trust shall for the time being be vested by survivorship, or under the laws relating to intestate or testamentary succession, or to any person or persons who may be appointed under any power in the will, or by the High Court, to succeed to the trusteeship vested in such legatee or legatees in trust as aforesaid.[c]

Executors to have power of raising money, &c., where no sufficient bequest.

**27.** If any testator who shall have created such a charge as is described in section 25 of this Act, shall not have bequeathed the property charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors (if any) for the time being named in such will, shall have the same or the like power of

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[a] 22 & 23 Vic., c. 35, s. 12. [b] 22 & 23 Vic., c. 35, s. 14. [c] 22 & 23 Vic., c. 35, s. 15.

raising the said moneys as is hereinbefore vested in the legatee or legatees in trust of the said property, and such power shall from time to time devolve on and become vested in the person or persons (if any) in whom the executorship shall for the time being be vested.[a]

Purchasers, &c., not bound to enquire as to powers.

28. Purchasers or mortgagees shall not be bound to enquire whether the powers conferred by sections 25, 26 and 27 of this Act, or any of them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof.[b]

*Inheritance.*

Descent how traced.

29. In cases of intestacies occurring before the first day of January, 1866, where there shall be a total failure of heirs of the purchaser, or where any immoveable property shall be descendible as if an ancestor had been the purchaser thereof, and there shall be a total failure of the heirs of such ancestor, then and in every such case the property shall descend, and the descent shall thenceforth be traced, from the person last entitled to the property as if he had been the purchaser thereof.[c]

This section shall be read as part of Act No. XXX of 1839[d] *(for the amendment of the law of inheritance)*.[e]

*Assignment of Moveables and Terms for Years.*

Assignment to self and others.

30. Any person shall have power to assign moveable property now by law assignable, terms for years of immoveable property, and estates by *elegit*, directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another.[f]

*Purchasers.*

Not bound to see to application of purchase-money, &c.

31. The *bonâ fide* payment to and the receipt of any person to whom any purchase or mortgage-money shall be payable upon any express or implied trust, shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication, thereof.[g]

*Investment of Trust-funds.*

On what securities trust-funds may be invested.

32. Trustees having trust-money in their hands which it is their duty to invest at interest, shall be at liberty, at their discretion, to invest the same in any Government securities, and such trustees shall also be at liberty, at their discretion, to call in any trust-funds invested in any other securities

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[a] 22 & 23 Vic., c. 35, s. 16.
[b] 22 & 23 Vic., c. 35, s. 17.
[c] 22 & 23 Vic., c. 35, s. 19.
[d] Repealed, except as to descents before 1866, by Act No. VIII of 1868.
[e] 22 & 23 Vic., c. 35, s. 20.
[f] 22 & 23 Vic., c. 35, s. 21.
[g] 22 & 23 Vic., c. 35, s. 23, omitting the limiting clause "unless the contrary shall be expressly declared by the instrument creating the trust or security."

than as aforesaid, and to invest the same on any such securities as aforesaid, and also from time to time, at their discretion, to vary any such investments as aforesaid for others of the same nature :

Provided always, that no such original investment as aforesaid, and no such change of investment as aforesaid, shall be made where there is a person under no disability entitled in possession to receive the income of the trust-fund for his life, or for a term of years determinable with his life, or for any greater estate, without the consent in writing of such person.[a]

*Trustees and Executors.*

Trustees may apply income of property of minors, &c., for their maintenance.

**33.** In all cases where any property is held by trustees in trust for a minor, either absolutely or contingently on his attaining majority, or on the occurrence of any event previously to his attaining majority, it shall be lawful for such trustees, at their sole discretion, to pay to the guardians (if any) of such minor, or otherwise to apply for or towards the maintenance or education of such minor, the whole or any part of the income to which such minor may be entitled in respect of such property, whether there be any other fund applicable to the same purpose, or any other person bound by law to provide for such maintenance or education, or not;

and such trustees shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in proper securities, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations shall have arisen :

Provided always, that it shall be lawful for such trustees at any time, if it shall appear to them expedient, to apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.[b]

Provisions for appointment of new trustees, on death, &c.

**34.** Whenever any trustee, either original or substituted, and whether appointed by any High Court or otherwise, shall die, or be six months absent from British India, or desire to be discharged from, or refuse, or become unfit or incapable, to act in the trusts or powers in him reposed, before the same shall have been fully discharged and performed, it shall be lawful for the person or persons nominated for that purpose by the deed, will or other instrument creating the trust (if any), or if there be no such person, or no such person able and willing to act, then for the surviving or continuing trustees or trustee for the time being, or the acting executors or executor, or administrators or administrator, of the last surviving and continuing trustee, or for

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[a] 23 & 24 Vic., c. 145, s. 25. [b] 23 & 24 Vic., c. 145, s. 26.

the retiring trustees, if they shall all retire simultaneously, or for the last retiring trustee, or where there are two or more classes of trustees of the instrument creating the trust, then for the surviving or continuing trustees or trustee of the class in which any such vacancy or disqualification shall occur (and for this purpose any refusing or retiring trustee shall, if willing to act in the execution of the power, be considered a continuing trustee), by writing to appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, or being absent from British India, or desiring to be discharged, or refusing or becoming unfit or incapable to act as aforesaid.

Transfer of trust-property to new trustees.

So often as any new trustee or trustees shall be so appointed as aforesaid, all the trust-property (if any) which for the time being shall be vested in the surviving or continuing trustees or trustee, or in the heirs, executors or administrators of any trustee, shall with all convenient speed be conveyed and transferred so that the same may be legally and effectually vested in such new trustee or trustees, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require.

Powers, &c., of new trustees.

Every new trustee to be appointed as aforesaid, as well before as after such conveyance or transfer as aforesaid, and also every trustee appointed by any High Court, either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act as if he had been originally nominated a trustee by the deed, will or other instrument (if any) creating the trust.[a]

Appointment of Official Trustee to be a trustee.

The Official Trustee may with his consent, and by the order of the High Court, be appointed under this section in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

Appointment in place of trustee predeceasing testator.

**35.** The power of appointing new trustees hereinbefore contained, may be exercised in cases where a trustee nominated in a will has died in the lifetime of the testator.[b]

Trustees' receipts to be discharges.

**36.** The receipts in writing of any trustees or trustee for any money payable to them or him by reason, or in the exercise, of any trusts or powers reposed or vested in them or him, shall be sufficient discharges for the money therein expressed to be received, and shall effectually exonerate the persons paying such money from seeing to the application thereof, or from being answerable for any loss or misapplication thereof.[c]

Every trust-instrument deemed to

**37.** Every deed, will or other instrument creating a trust, either expressly or by implication, shall, without prejudice to the clauses actually contained

[a] 23 & 24 Vic., c. 145, s. 27. [b] 23 & 24 Vic., c. 145, s. 28. [c] 23 & 24 Vic., c. 145, s. 29.

therein, be deemed to contain a clause in the words or to the effect following, that is to say,

contain clauses for indemnity and reimbursement of trustees.

"that the trustees or trustee for the time being of the said deed, will or other instrument, shall be respectively chargeable only for such moneys, stocks, funds and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects or defaults, and not for those of each other, nor for any banker, broker or other person with whom any trust-moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively; "and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will or other instrument, to reimburse themselves or himself, or pay or discharge out of the trust-premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will or other instrument."[a]

Executors may compound, &c.

**38.** It shall be lawful for any executors to pay any debts or claims upon any evidence that they may think sufficient, and to accept any composition, or any security for any debts due to the deceased, and to allow any time for payment of any such debts as they shall think fit, and also to compromise, compound or submit to arbitration all debts, accounts, claims and things whatsoever relating to the estate of the deceased, and for any of the purposes aforesaid to enter into, give and execute such agreements, instruments of composition, releases and other things as they shall think expedient, without being responsible for any loss to be occasioned thereby.[b]

Trustee, &c., making payment under power-of-attorney, not liable by reason of death of party giving power.

**39.** No trustee, executor or administrator making any payment or doing any act *bonâ fide* under or in pursuance of any power-of-attorney, shall be liable for the moneys so paid or the act so done, by reason that the person who gave the power-of-attorney was dead at the time of such payment or act, or had done some act to avoid the power:

Provided that the fact of the death, or of the doing of such act as last aforesaid, at the time of such payment or act *bonâ fide* done as aforesaid by such trustee, executor or administrator, was not known to him:

Provided always, that nothing herein contained shall in any manner affect or prejudice the right of any person entitled to the money against the person to whom such payment shall have been made; but that such person so entitled shall have the same remedy against such person to whom such pay-

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[a] 22 & 23 Vic., c. 35, s. 31.

[b] 23 & 24 Vic., c. 145, s. 30.

ment shall be made as he would have had against the trustee, executor or administrator, if the money had not been paid away under such power-of-attorney.[a]

As to liability of executor or administrator in respect of rents, covenants or agreements.

40. Where an executor or administrator liable as such to the rents, covenants or agreements contained in any lease or agreement for a lease granted or assigned, whether before or after the passing of this Act, to the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said lease, or agreement for a lease, as may have accrued due and been claimed up to the time of the assignment hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto, respectively, without appropriating any part, or any further part (as the case may be), of the estate of the deceased to meet any future liability under the said lease or agreement for a lease.

The executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease.

Nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.[b]

As to liability of executor, &c., in respect of rents, &c., in conveyance on rent-charge.

41. In like manner, where an executor or administrator liable as such to the rent, covenants or agreements contained in any conveyance on chief rent or rent-charge (whether any such rent be by limitation of use, grant or reservation), or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said conveyance or agreement for a conveyance, as may have accrued due and been claimed up to the time of the conveyance hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out

[a] 22 & 23 Vic., c. 35, s. 26.

[b] 22 & 23 Vic., c. 35, s. 27.

on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and shall have conveyed such property, or assigned the said agreement for such conveyance as aforesaid, to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto, respectively, without appropriating any part or any further part (as the case may be) of such estate to meet any future liability under the said conveyance or agreement for a conveyance.

The executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance or agreement for conveyance.

Nothing herein contained shall prejudice the right of the grantor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed.[a]

As to distribution of assets of testator or intestate after notice given by executor and administrator.

**42.** Where an executor or administrator shall have given such or the like notices, as in the opinion of the Court in which such executor or administrator is sought to be charged would have been given by the High Court in an administration-suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets, or a part thereof, as the case may be.

Nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.[b]

Trustee, executor, &c., may apply by petition to Judge of High

**43.** Any trustee, executor or administrator shall be at liberty, without the institution of a suit, to apply by petition to any Judge of the High Court for the opinion, advice or direction of such Judge on any question re-

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[a] 22 & 23 Vic., c. 35, s. 28.

[b] 22 & 23 Vic., c. 35, s. 29.

Court for opinion, advice, &c., in management, &c., of trust-property.

specting the management or administration of the trust-property or the assets of any testator or intestate.

Such application shall be served upon, or the hearing thereof shall be attended by, all persons interested in such application, or such of them as the said Judge shall think expedient.

The trustee, executor or administrator acting upon the opinion, advice or direction given by the said Judge shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor or administrator in the subject-matter of the said application:

Provided nevertheless, that this Act shall not extend to indemnify any trustee, executor or administrator, in respect of any act done in accordance with such opinion, advice or direction as aforesaid, if such trustee, executor or administrator shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction: and the costs of such application as aforesaid shall be in the discretion of the Judge to whom the said application shall be made.[a]

*General Provisions.*

Tenants for life, &c., may execute powers, notwithstanding incumbrances.

**44.** For the purposes of this Act, a person shall be deemed to be entitled to the possession or to the receipt of the rents and income of immoveable or moveable property, although his estate may be charged or incumbered, either by himself or by any former owner, or otherwise howsoever to any extent: but the estates or interests of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and income as aforesaid, unless they shall concur therein.[b]

Operation of Act.

**45.** The provisions contained in this Act shall, except as hereinbefore otherwise provided, extend only to persons entitled or acting under a deed, will, codicil or other instrument executed after this Act comes into operation, or under a will or codicil confirmed or revived by a codicil executed after that date,[c] and only to property in British India and to cases to which English law is applicable.

Short title.

**46.** This Act may be called "The Trustees and Mortgagees' Powers Act, 1866.

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[a] 22 & 23 Vic., c. 35, s. 30. [b] 23 & 24 Vic., c. 145, s. 31. [c] 23 & 24 Vic., c. 145, s. 34.

## ACT No. VII OF 1867.

*Received the Governor General's assent on the 1st February* 1867.

### An Act to reduce the pecuniary penalty for purchasing from Soldiers arms, ammunition, clothes and other articles.

WHEREAS by the Act for punishing mutiny and desertion, and for the better payment of the army and their quarters, it is enacted as follows:— Preamble.

"Any person who shall knowingly detain, buy, exchange or receive from any soldier or deserter, or any other person acting for or on his behalf, on any pretence whatsoever, or who shall solicit or entice any soldier, or shall be employed by any soldier, knowing him to be such, to sell any arms, ammunition, medals for good conduct or for distinguishment or other service, clothes or military furniture, or any provisions, or any sheets or other articles used in barracks, provided under barrack-regulations, or regimental necessaries, or any article of forage provided for any horses belonging to Her Majesty's service, or who shall have in his or her possession or keeping any such arms, ammunition, medals, clothes, furniture, provisions, spirits, articles, necessaries or forage, and shall not give a satisfactory account how he or she came by the same, or shall change the colour of any clothes as aforesaid, shall forfeit for every such offence any sum not exceeding twenty pounds, together with treble the value of all or any of the several articles of which such offender shall so become or be possessed; and if any person having been so convicted shall afterwards be guilty of any such offence, he shall for every such offence forfeit any sum not exceeding twenty pounds but not less than five pounds, and the treble value of all or any of the several articles of which such offender shall have so become possessed, and shall in addition to such forfeiture be committed to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for such term, not exceeding six calendar months, as the convicting Justice or Justices shall think fit; and upon any information against any person for a second or any subsequent offence, a copy of the former conviction, certified by the proper officer having the care or custody of such conviction, or any copy of the same proved to be a true copy, shall be sufficient evidence to prove such former conviction; and if any credible person shall prove on oath before a Justice of the Peace, or person exercising like Penalty on purchasing soldiers' necessaries, stores, &c.

authority according to the laws of the part of Her Majesty's dominions in which the offence shall be committed, a reasonable cause to suspect that any person has in his or her possession, or on his or her premises, any property of the description hereinbefore described, on or with respect to which any such offence shall have been committed, such Justice may grant a warrant to search for such property as in the case of stolen goods; and if upon such search any such property shall be found, the same shall and may be seized by the officers charged with the execution of such warrant, who shall bring the offender in whose possession the same shall be found before the same or any other Justice of the Peace, to be dealt with according to law: Provided always, that it shall be lawful for the legislature of any of Her Majesty's foreign dominions, on the recommendation of the officer or officers for the time being administering the government thereof, but not otherwise, to make provision by law for reducing such pecuniary penalty, if not exceeding twenty pounds, to such amount as may to such legislature appear to be better adapted to the ability and pecuniary means of Her Majesty's subjects and others inhabiting the same, which reduced penalty shall be sued for and recovered in such and the same manner as the full penalty hereby imposed: Provided also, that it shall be competent to Her Majesty, or to the person or persons administering the government of any such foreign dominions as aforesaid, to exercise, in respect of the laws so to be passed as aforesaid, all such powers and authorities as are by law vested in Her Majesty or in any such officer or officers as aforesaid in respect of any other law made or enacted by any such legislature."

And whereas the officers now administering the government of British India have recommended that the pecuniary penalty aforesaid, if not exceeding twenty pounds, shall be reduced to the amount hereinafter mentioned as being better adapted to the ability and pecuniary means of Her Majesty's subjects and others inhabiting British India; And whereas it is expedient to give effect to such recommendation;—In exercise of the said power for this purpose contained in the said Act and of every other power enabling the Governor General of India in Council in this behalf, and on the recommendation aforesaid; It is hereby enacted as follows:—

Reduction of pecuniary penalties provided by Mutiny Act.

1. From and after the passing of this Act, wherever the pecuniary penalty which might have been imposed under the said recited section if this Act had not been passed shall not exceed twenty pounds or two hundred rupees, the first part of the said section shall be read as if, for the words "twenty pounds," wherever they occur, the words "fifty rupees" were substituted, and as if, for the words "five pounds," the words "five rupees" were substituted.

## ACT No. X OF 1867.

*Received the Governor General's assent on the 15th February 1867.*

# An Act to empower Courts of Small Causes in the Mofussil to refer for decision questions arising previous to the hearing of suits or in the execution of decrees or orders.[a]

Preamble.

WHEREAS it is expedient to enable the Courts constituted under Act No. XI of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*) to refer for the decision of the High Court within whose jurisdiction they may respectively be situate, questions of law or usage having the force of law arising previous to the hearing of suits under the said Act, or in the execution of decrees or orders in such suits; It is hereby enacted as follows :—

Power to refer to High Court questions arising previous to hearing or in execution of decrees.

1. If at any point in the proceedings previous to the hearing of a suit[b] under the said Act, or if in the execution of the decree or order in any such suit, any question of law or usage having the force of law shall arise, the Court, in suits for an amount not exceeding five hundred rupees, may, either of its own motion or on the application of any of the parties to the suit, and in suits for an amount greater than five hundred rupees, shall, draw up a statement of the case, and refer it with the Court's own opinion thereon to the decision of the High Court within whose jurisdiction such Court may be situate.

If the question has arisen previous to the hearing, the Court may either stay such proceedings, or proceed in the case notwithstanding such reference, and pass a decree contingent upon the opinion of the High Court upon the point referred.

If a decree has been made, the execution of the decree shall be stayed until the receipt of the order of the High Court upon such reference.

All the provisions contained in this section shall apply, *mutatis mutandis*, to the stating of a case by a Registrar.

Act to be read with Act XI of 1865.

2. This Act shall be read with and taken as part of Act No. XI of 1865; and the provisions contained in sections 24, 25, 26, 27 and 28 of that Act shall, *mutatis mutandis*, apply to cases referred under this Act.

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[a] Declared to apply to the whole of British India, except the Scheduled Districts, Act No. XV of 1874.

[b] 3 Beng. A. C. J. 135.

## ACT No. XVI OF 1867.

*Received the Governor General's assent on the 1st March* 1867.

### An Act to authorize the making of acting appointments to certain Judicial Offices.[a]

Preamble.

WHEREAS the Governor General of India in Council or the Local Government, as the case may be, is empowered by divers enactments to appoint the Judges of certain Courts in British India: And whereas it has been doubted whether he or it is empowered to appoint persons to act temporarily as such Judges, and it is expedient to remove such doubts; It is hereby enacted as follows:

Power to appoint acting Judges.

1. In every case in which the Governor General of India in Council, or the Local Government, as the case may be, has power under any Act or Regulation to appoint a Judge of any Court in British India, such power shall be taken to include the power to appoint any person capable of being appointed a permanent Judge of such Court, to act as Judge of the same Court for such time as the Governor General of India in Council or the Local Government, as the case may be, shall direct.

Their powers and duties.

Every person so appointed to act temporarily as a Judge of any such Court shall have the powers and perform the duties which he would have had and been liable to perform in case he had been duly appointed a permanent Judge of the same Court.

Construction of enactments referred to.

2. Every such Act and Regulation shall be construed as if it contained a special clause to the purport or effect of the first section of this Act.

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## ACT No. XXII OF 1867.

*Received the Governor General's assent on the 15th March* 1867.

### An Act for the regulation of public Saráís and Puraos.

Preamble.

WHEREAS it is expedient to provide for the regulation of public Saráís and Puraos; It is hereby enacted as follows:—

Repeal of Bengal Regulation XIV of

1. Regulation XIV of 1807 of the Government of the Presidency of Fort William in Bengal, section 11, clause 5, is hereby repealed so far as it

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[a] Now see Act No. 1 of 1868, s. 3, clause (6).

applies to public saráís in the territories to which this Act may from time to time apply. 1807, section 11, clause 5.

2. In this Act—unless there be something repugnant in the subject or context— Interpretation-clause.

"Saráí" means any building used for the shelter and accommodation of travellers, and includes, in any case in which only part of a building is used as a saráí, the part so used of such building. "Saráí."

It also includes a purao so far as the provisions of this Act are applicable thereto :

"Keeper of a saráí" includes the owner and any person having or acting in the care or management thereof : "Keeper of a saráí."

"Magistrate of the District" means the chief officer charged with the executive administration of a district in criminal matters whatever may be his designation : "Magistrate of the District."

Words in the singular include the plural, and *vice versâ* ; And in any place in which this Act shall operate, "Local Government" shall mean the person administering executive government in such place, and shall include a Chief Commissioner and the Commissioner in Sindh. Number. "Local Government."

3. Within six months after this Act shall come into operation, the Magistrate of the District in which any saráí to which this Act shall apply may be situate shall, and from time to time thereafter such Magistrate may, give to the keeper of every such saráí notice in writing of this Act, by leaving such notice for the keeper at the saráí ; and shall by such notice require the keeper to register the saráí as by this Act provided. Notice of Act to be given to keepers of saráís.

Such notice may be in the form in the schedule to this Act annexed or to the like effect. Form of notice.

4. The Magistrate of the District shall keep a register in which shall be entered by such Magistrate or such other person as he shall appoint in this behalf, the names and residences of the keepers of all saráís within his jurisdiction, and the situation of every such saráí. Registers of saráís to be kept.

No charge shall be made for making any such entry.

5. After one month after the giving of such notice to register as by this Act provided, the keeper of any saráí or any other person shall not receive any lodger or allow any person, cattle, sheep, elephant, camel or other animal, or any vehicle, to halt or be placed in such saráí until the same and the name and residence of the keeper thereof shall have been registered as by this Act provided. Lodgers, &c., not to be received in saráís until registered.

6. The Magistrate of the District may, if he shall think fit, refuse to register as the keeper of a saráí a person who does not produce a certificate of Magistrate may refuse to register keep-

er not producing certificate of character.

character in such form and signed by such persons as the Local Government shall from time to time direct.

Duties of keepers of saráis.

7. The keeper of a sarái shall be bound—

(1.) when any person in such sarái is ill of any infectious or contagious disease, or dies of such disease, to give immediate notice thereof to the nearest police-station :

(2.) at all times when required by any Magistrate or any other person duly authorized by the Magistrate of the District in this behalf, to give him free access to the sarái and allow him to inspect the same or any part thereof :

(3.) to thoroughly cleanse the rooms and verandahs and drains of the sarái, and the wells, tanks, or other sources from which water is obtained for the persons or animals using it, to the satisfaction of, and so often as shall be required by, the Magistrate of the District, or such person as he shall appoint in this behalf :

(4.) to remove all noxious vegetation on or near the sarái, and all trees and branches of trees capable of affording to thieves means of entering or leaving the sarái :

(5.) to keep the gates, walls, fences, roofs and drains of the sarái in repair :

(6.) to provide such number of watchmen as may, in the opinion of the Magistrate of the District, subject to such rules as the Local Government may prescribe in this behalf, be necessary for the safety and protection of persons and animals or vehicles lodging in, halting at or placed in, the sarái ; and

(7.) to exhibit a list of charges for the use of the sarái at such place and in such form and languages as the Magistrate of the District shall from time to time direct.

Power to order reports from keepers of saráis.

8. The keeper of a sarái shall from time to time, if required so to do by an order of the Magistrate of the District served upon him, report, either orally or in writing as may be directed by the Magistrate, to such Magistrate or to such person as the Magistrate shall appoint, every person who resorted to such sarái during the preceding day or night.

When schedules to be furnished.

If written reports are required for any space of time exceeding a single day or night, schedules shall be furnished by the Magistrate of the District to the keeper.

Keeper to fill up and send schedules.

The keeper shall from time to time fill up the said schedules with the information so required, and transmit them to the said Magistrate, in such manner and at such intervals as may from time to time be ordered by him.

Power to shut up, secure, clear and clean

9. If any sarái by reason of abandonment or of disputed ownership shall remain untenanted, and thereby become a resort of idle and disorderly persons,

or become in a filthy or unwholesome state, or be complained of by any two or more of the neighbours as a nuisance, the Magistrate of the District, after due enquiry, may cause notice in writing to be given to the owner, or to the person claiming to be the owner, if he be known and resident within the district, and may also cause such notice to be put on some conspicuous part of the saráí, requiring the persons concerned therein, whoever they may be, to secure, enclose, clean or clear the same; deserted saráís.

and if such requisition shall not be complied with within eight days, the Magistrate of the District may cause the necessary work to be executed, and all expenses thereby incurred shall be paid by the owner of the saráí, and shall be recoverable like penalties under this Act, or, in case of abandonment or disputed ownership of the saráí, by the sale of any material found therein.

**10.** If a saráí or any part thereof be deemed by the Magistrate of the District to be in a ruinous state, or likely to fall, or in any way dangerous to the persons or animals lodging in or halting at the saráí, he shall give notice in writing to the keeper of the saráí, requiring him forthwith to take down, repair or secure (as the case may be) the saráí or such part thereof as the case may require. Taking down or repairing ruinous saráís.

If the keeper do not begin to take down, repair or secure the saráí, or such part as aforesaid, within three days after such notice, and complete such work with due diligence, the Magistrate shall cause all or so much of the saráí as he shall think necessary to be taken down, repaired or otherwise secured.

All the expenses so incurred by the Magistrate shall be paid by the keeper of the saráí, and shall be recoverable from him as hereinafter mentioned.

**11.** If any such saráí or any part thereof be taken down by virtue of the powers aforesaid, the Magistrate of the District may sell the materials thereof, or so much of the same as shall be taken down under the provisions of the last preceding section, and apply the proceeds of such sale in payment of the expenses incurred, and shall restore the overplus (if any) arising from such sale to the owner of such saráí on demand, and may recover the deficiency (if any) as if the amount thereof were a penalty under this Act. Sale of materials of ruinous saráís.

**12.** Whoever, being the keeper of any saráí, suffers the same to be in a filthy and unwholesome state, or overgrown with vegetation, or, after the expiration of two days from the time of his receiving notice in writing from the Magistrate of the District to cleanse or clear the same, or after he shall have been convicted of suffering the same to be in such state or so overgrown as aforesaid, shall allow the same to continue in such state, or so overgrown, shall be liable to the penalties provided in section 14 of this Act. Penalty for permitting saráís to be filthy or overgrown.

Proviso.

Provided that the Magistrate of the District may, in lieu of enforcing such daily penalty, enter on and cleanse or clear the said sarái, and the expense incurred by the Magistrate in respect thereof shall be paid to him by the keeper, and shall be recoverable as by this Act provided in the case of penalties.

Power for Local Government to make regulations.

13. The Local Government may from time to time make regulations for the better attainment of the objects of this Act, provided that such rules be not inconsistent with this Act or with any other law for the time being in force, and may from time to time repeal, alter and add to the same.

Regulations to be published.

All regulations made under this Act, and all repeals thereof and alterations and additions thereto, shall be published in the local official Gazette.

Penalty for infringing Act or regulations.

14. If the keeper of a sarái offend against any of the provisions of this Act or any of the regulations made in pursuance of this Act, he shall for every such offence be liable on conviction before any Magistrate to a penalty not exceeding twenty rupees, and to a further penalty not exceeding one rupee a day for every day during which the offence continues :

Saving of penalties incurred otherwise.

Provided always, that this Act shall not exempt any person from any penalty or other liability to which he may be subject irrespective of this Act.

Recovery of penalties.

All penalties imposed under this Act may be recovered in the same manner as fines may be recovered under section 307 [a] of the Code of Criminal Procedure.

Effect of conviction for third offence.

15. Where a keeper of a sarái is convicted of a third offence under this Act, he shall not afterwards act as keeper of a sarái without the license in writing of the Magistrate of the District, who may either withhold such license or grant the same on such terms and conditions as he may think fit.

Section 8 only to apply to certain saráis.

16. No part of this Act, except section 8, shall apply to any sarái which may be under the direct management of the Local Government or of any municipal committee.

Extent of Act.

17. This Act shall in the first instance extend only to the territories under the government of the Lieutenant Governor of the North-West Provinces of the presidency of Fort William in Bengal.

Power to Local Government to extend Act.

But it shall be lawful for the Local Government, by notification in the local Gazette, to extend this Act, *mutatis mutandis*, to any other part of the territories which are or may be vested in Her Majesty or Her Successors by the Statute 21 & 22 Vic., cap. 106 (*An Act for the better government of India*), except the towns of Calcutta, Madras and Bombay, and the Settlement of Prince of Wales' Island, Singapore and Malacca.

Short title.

18. This Act may be called "The Saráis' Act, 1867."

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[a] See Act No. X of 1872, section 2 and schedule V.

## SCHEDULE.

### Form of Notice.

Take notice that on the day of 1867, an Act called "The Saráís' Act, 1867," was passed, and that before the day of 18 you, being the keeper of a saráí [*or* purao] within [*here state the district over which the jurisdiction of the Magistrate giving the notice extends*] must have your saráí [*or* purao] registered, and that the register is to be kept at [*here state where the register is to be kept*], and that if you do not have your saráí [*or* purao] so registered, you will be liable to a penalty not exceeding twenty rupees, and to a further penalty not exceeding one rupee a day for every day during which the offence continues, and that on your applying to [*here give the name and address of the person to keep the register*] he will register your saráí [*or* purao] free of all charge to you.

Dated the day of 18 .

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## ACT No. XXV of 1867.

*Received the Governor General's assent on the 22nd March* 1867.

# An Act for the regulation of Printing-presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books.[a]

Preamble.

Whereas it is expedient to provide for the regulation of printing-presses and of periodicals containing news, for the preservation of three copies of every book printed or lithographed in British India, and for the registration of such books; It is hereby enacted as follows :—

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## PART I.

### Preliminary.

Interpretation-clause

1. In this Act—unless there shall be something repugnant in the subject or context—

"Book."

"Book" includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed :

"British India."

"British India" means the territories which are or shall be vested in Her Majesty or Her successors by the Statute 21 & 22 Vic., cap. 106 (*An Act for the better government of India*) other than the Settlement of Prince of Wales' Island, Singapore and Malacca :

[a] Declared to apply to the whole of British India, except the Scheduled Districts, Act No. XV of 1874.

"Magistrate."

"Magistrate" means any person exercising the full powers of a Magistrate, and includes a Magistrate of Police and a Justice of the Peace:

Number. Gender.

Words in the singular include the plural, and *vice versâ;* words denoting the masculine gender include females:

"Local Government."

And in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer executive government in such part, and includes a Chief Commissioner.

2. [*Repealed by Act No. XIV of* 1870.]

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## PART II.

### Of Printing-presses and Newspapers.

Particulars to be printed on books and papers.

3. Every book or paper printed within British India, shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published) of the publisher, and the place of publication.

Keeper of printing press to make declaration.

4. No person shall, within British India, keep in his possession any press for the printing of books or papers, who shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be:

"I, *A. B.*, declare that I have a press for printing at ———." And this last blank shall be filled up with a true and precise description of the place where such press may be situate.

Rules as to publication of printed periodicals containing public news.

5. No printed periodical work, containing public news or comments on public news, shall be published in British India, except in conformity with the rules hereinafter laid down:

(1.) The printer and the publisher of every such periodical work shall appear before the Magistrate within whose local jurisdiction such work shall be published, and shall make and subscribe, in duplicate, the following declaration:

"I, *A. B.*, declare that I am the printer [*or* publisher, *or* printer and publisher] of the periodical work entitled——and printed [*or* published, *or* printed and published, *as the case may be*] at——." And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted:

(2.) As often as the place of printing or publication is changed, a new declaration shall be necessary:

(3.) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave British India, a new declaration from a printer or publisher resident within the said territories shall be necessary.

6. Each of the two originals of every declaration so made and subscribed as is aforesaid, shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made. Authentication of declaration.

One of the said originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited among the records of the High Court of Judicature, or other Court within the local limits of whose ordinary original civil jurisdiction the said declaration shall have been made. Deposit.

The officer in charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said declaration, attested by the seal of the Court which has the custody of the original, on payment of a fee of two rupees. Inspection and copies of declaration.

7. In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every periodical work whereof the title shall correspond with the title of the periodical work mentioned in the declaration. Office-copy of declaration to be *primâ facie* evidence.

8. Provided always, that any person who may have subscribed any such declaration as is aforesaid, and who may subsequently cease to be the printer or publisher of the periodical work mentioned in such declaration, may appear before any Magistrate, and make and subscribe in duplicate the following declaration:— New declaration by persons who have signed declaration and subsequently ceased to be printers or publishers.

"I, *A. B.*, declare that I have ceased to be the printer [*or* publisher, *or* printer and publisher] of the periodical work entitled————."

Each original of the latter declaration shall be authenticated by the signature and seal of the Magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration. Authentication and filing.

The officer in charge of each original of the latter declaration shall allow any person applying to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said latter declaration, attested by the seal of the Court having custody of the original, on payment of a fee of two rupees. Inspection and supply of copies.

In all trials in which a copy, attested as is aforesaid, of the former declaration shall have been put in evidence, it shall be lawful to put in evidence a copy, attested as is aforesaid, of the latter declaration, and the former Putting copy in evidence.

declaration shall not be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the periodical work therein mentioned.

## PART III.

### Delivery of Books.

Three copies of books printed after Act comes into force, and of all subsequent editions, to be delivered to Government within a month.

9. Three printed or lithographed copies of the whole of every book which shall be printed or lithographed in British India after this Act shall come into force, together with all maps, prints or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same shall be produced, and also of any second or subsequent edition which shall be so produced with any additions or alterations, whether the same shall be in letter-press or in the maps, prints or other engravings belonging thereto, and whether the first edition of such book shall have been produced before or after this Act shall come into force, shall, within one calendar month after the day in which any such book shall first be delivered out of the press, and notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered by the printer, bound, sewed or stitched together, and upon the best paper on which the same shall be printed or lithographed, at such place and to such officer as the Local Government shall, by notification in the official Gazette, from time to time direct.[a]

Supply to printer of maps, &c.

The publisher or other person employing the printer shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints and engravings, finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid.

Periodicals excepted.

Nothing in the former part of this section shall apply to any periodical work published in conformity with the rules laid down in section 5 of this Act.

Receipt and payment for copies.

10. Such officer shall thereupon give a receipt in writing for the copies so received, and, if the book is for sale to the public, shall, on the publication thereof, pay the publisher for the same copies at the rate at which the book shall be *bonâ fide* sold for cash to the public.

Disposal of the three copies.

11. One of such copies shall be transmitted to the Secretary of State for India; another copy shall be disposed of as the Governor General of India in Council shall from time to time, by general or special order, direct, and the remaining copy shall, after a memorandum containing the particulars hereinafter mentioned respecting the book shall have been registered as hereinafter provided, be deposited in such public library, or be otherwise disposed of, as the Local Government shall from time to time determine.

[a] See *Oudh Government Gazette*, 26th July 1873, p. 7.

## PART IV.

### PENALTIES.

**12.** Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

Penalty for printing contrary to rule in section 3.

**13.** Whoever shall keep in his possession any such press as aforesaid, without making such a declaration as is required by section 4 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

Penalty for keeping press without making declaration required by section 4.

**14.** Any person who shall, in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall, on conviction before Magistrate, be punished by fine not exceeding five thousand rupees, and imprisonment for a term not exceeding two years.

Punishment for making false statement.

**15.** Whoever shall print or publish any such periodical work as is hereinbefore described, without conforming to the rules hereinbefore laid down, or whoever shall print or publish, or shall cause to be printed or published, any such periodical work, knowing that the said rules have not been observed with respect to that work, shall, on conviction before a Magistrate, be punished with fine not exceeding five thousand rupees, or imprisonment for a term not exceeding two years, or both.

Penalty for printing or publishing periodicals without conforming to rules.

**16.** If any printer of any such book as is referred to in section 9 of this Act, or of any second or subsequent edition of any such book, shall neglect to deliver three copies of the same pursuant to this Act, he shall for every such default forfeit, besides the value of the copies which he ought to have delivered, a sum not exceeding fifty rupees, to be recovered by the said officer on conviction before a person exercising any of the powers of a Magistrate.

Penalty for non-delivery of books.

If any publisher or other person employing any such printer shall neglect to supply him in manner aforesaid with the maps, prints or engravings, finished and coloured as aforesaid, which may be necessary to enable him to comply with the provisions of the same section, such publisher or other person shall, for every such default, forfeit, besides the value of the said maps, prints or engravings which he ought to have supplied, a sum not exceeding the said amount, and such sum shall be recovered in manner last aforesaid.

For not supplying printer with maps, &c.

Mode of recovering fines.

17. All pecuniary penalties imposed under this Act may be recovered, if for offences committed outside the local limits of the towns of Calcutta, Madras and Bombay, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act for regulating the Police of such towns in force for the time being.

Disposal.

All such penalties shall be disposed of as the Local Government shall from time to time direct.

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## PART V.

### *Registration of Books.*

Registration of memoranda of books.

18. There shall be kept at such office, and by such officer as the Local Government shall appoint in this behalf, a book to be called a Catalogue of Books printed in British India, wherein shall be registered a memorandum of every book which shall have been delivered pursuant to section 9 of this Act.

Contents of memorandum.

Such memorandum shall (so far as may be practicable) contain the following particulars (that is to say) :—

(1.) the title of the book and the contents of the title-page, with a translation into English of such title and contents, when the same are not in the English language :

(2.) the language in which the book is written :

(3.) the name of the author, translator or editor of the book or any part thereof :

(4.) the subject :

(5.) the place of printing and the place of publication :

(6.) the name or firm of the printer and the name or firm of the publisher :

(7.) the date of issue from the press or of the publication :

(8.) the number of sheets, leaves or pages :

(9.) the size :

(10.) the first, second or other number of the edition :

(11.) the number of copies of which the edition consists :

(12.) whether the book is printed or lithographed :

(13.) the price at which the book is sold to the public; and

(14.) the name and residence of the proprietor of the copyright or of any portion of such copyright.

Registration of memorandum.

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the copies thereof in manner aforesaid.

Every registration under this section shall, upon payment of the sum of two rupees to the officer keeping the said catalogue,[a] be deemed to be an entry in the book of registry kept under Act No. XX of 1847, *(for the encouragement of learning in the Territories subject to the government of the East India Company, by defining and providing for the enforcement of the right called Copyright therein)*; and the provisions contained in that Act as to the said book of registry shall apply, *mutatis mutandis*, to the said catalogue.

Effect of registration.

Act XX of 1847 applied.

**19.** The memoranda registered during each quarter in the said catalogue shall be published in the local Gazette, as soon as may be after the end of such quarter, and a copy of the memoranda so published shall be sent to the said Secretary of State, and to the secretary to the Government of India in the Home Department respectively.

Publication of memoranda registered.

Sending copies.

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## PART VI.

### *Miscellaneous.*

**20.** The Local Government shall have power to make such rules as may be necessary or desirable for carrying out the objects of this Act, and from time to time to repeal, alter and add to such rules.[b]

Power to make rules.

All such rules, and all repeals and alterations thereof, and additions thereto, shall be published in the local Gazette.

Publication.

**21.** The Governor General of India in Council may, by notification in the *Gazette of India*, exclude any class of books from the operation of the whole or any part or parts of this Act.[c]

Power to exclude any class of books from operation of Act.

**22.** Part III, and section 16, and Part V of this Act shall remain in force until the Governor General of India in Council shall declare to the contrary by notification in the *Gazette of India*.

Continuance of parts of Act.

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[a] All such books as become the property of Government for educational purposes are exempted from this payment, Home Department, No. 4823, dated 21st October 1869, *Gazette of India*, 23rd October 1869, p. 400.

[b] Rules have been made under this section by the—

Madras Govt., see *Fort Saint George Gazette*, dated 27th September 1867, p. 739.
Bombay Govt., see *Bombay Govt. Gazette*, dated 6th February 1868, p. 93.
" ditto ditto dated 20th July 1871, p. 783.
Bengal Govt., see *Calcutta Gazette*, dated 3rd July 1867, p. 1137.
N.-W. P. Govt., see *Govt. Gazette, N. W. P.*, dated 15th May 1867, pp. 327—29.
Panjáb Govt., see *Govt. Gazette, Panjáb*, dated 20th June 1867, p. 531.
Chief Commr., Oudh, see *Govt. Gazette, Oudh*, dated 26th July 1873, p. 8.
" Central Provs., see *Central Provs. Gazette*, dated 13th July 1867, supp.
" British Burma, see *British Burma Gazette*, dated 9th October 1875, Part II, pp. 189, 190.

[c] "By virtue of the power vested in the Governor General in Council by section 21 of Act XXV of 1867, entitled 'An Act for the regulation of Printing-presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books,' His

## ACT No. XXVI OF 1867.

*Received the Governor General's assent on the 22nd March* 1867.

### An Act to amend the law relating to Stamp-duties.

No advocate of any High Court shall be required to file or present a mukhtárnáma or wakálatnáma or any other document empowering him to act.

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## ACT No. XXXI OF 1867.

*Received the Governor General's assent on the 26th June* 1867.

### An Act to render penal certain offences committed by servants of Railway Companies.

Preamble.

WHEREAS it is expedient to extend certain provisions of the Indian Penal Code relating to public servants to persons in the employment of Railway Companies; It is hereby enacted as follows:—

Interpretation-clause.

1. In this Act "Railway Company" means the proprietors for the time being of every railway or tramway situate in the territories vested in Her Majesty or Her successors under the Statute 21 & 22 Vic., cap. 106 *(An Act for the better government of India)*, or (so far only as regards British subjects within the dominions hereinafter mentioned) situate in the dominions of Princes and States in the East Indies in alliance with Her Majesty or Her successors, and the lessees, representatives and assigns of such proprietors.

Railway servants to be "public servants."

2. Every officer and servant of a Railway Company shall be deemed a "public servant" within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code.

"Government" to include Railway Company.

3. In the definition of legal remuneration contained in the said section 161, the word "Government" shall, for the purposes of this Act, be deemed to include a Railway Company.

Short title.

4. This Act shall be called "The Railway Servants' Act, 1867."

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Excellency in Council is pleased to declare that the following publications are exempted from the provisions of the said Act:—

1.—[*Cancelled.* Home Department, No. 3276, dated 16th August 1872, *Gazette of India*, 17*th* August 1872, Part I, p. 777.]
2.—Acts of the Legislative Councils without notes or commentaries.
3.—Price-lists and tradesmen's circulars.
4.—Catalogues of books and other articles, auctioneer's notices, and advertisements.
5.—Play-bills, comprising advertisements of theatrical and musical entertainments.
6.—Decisions of Courts of law without notes or commentaries.
7.—Petitions and appeals addressed to constituted authority under the provisions of law.
8.—Testimonials of private individuals or public officers.
9.—Annual reports of schools, banks, societies and firms.
10.—Almanacs and calendars.
11.—Labels affixed to articles of commerce."

Home Department, No. 5604, dated 21st December 1871, *Gazette of India*, 23rd December 1871, p. 979.

## ACT No. I of 1868.

*Received the Governor General's assent on the 3rd January* 1868.

# An Act for shortening the language used in Acts of the Governor General of India in Council and for other purposes.

WHEREAS it is expedient to shorten the language used in Acts made by the Governor General of India in Council, and to make certain provisions relating to such Acts; It is hereby enacted as follows:— Preamble.

1. This Act may be cited as "The General Clauses' Act, 1868." Short title.

2. In this Act and in all Acts made by the Governor General of India in Council after this Act shall have come into operation,—unless there be something repugnant in the subject or context,— Interpretation-clause.

(1.) Words importing the masculine gender shall be taken to include females; Gender.

(2.) Words in the singular shall include the plural, and *vice versâ*; Number.

(3.) "Person" shall include any company, or association, or body of individuals, whether incorporated or not; "Person."

(4.) "Year" and "month" shall respectively mean a year and month reckoned according to the British calendar; "Year" and "month."

(5.) "Immoveable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth; "Immoveable property."

(6.) "Moveable property" shall mean property of every description, except immoveable property; "Moveable property."

(7.) "Her Majesty" shall include Her heirs and successors to the Crown; "Her Majesty."

(8.) "British India" shall mean the territories for the time being vested in Her Majesty by the Statute 21 & 22 Vic., cap. 106 (*An Act for the better government of India*), other than the Settlement of Prince of Wales' Island, Singapore and Malacca; "British India."

(9.) "Government of India" shall denote the Governor General of India in Council, or, during the absence of the Governor General of India from his Council, the President in Council, or the Governor General of India alone, as regards the powers which may be lawfully exercised by them or him respectively; "Government of India."

(10.) "Local Government" shall mean the person authorized by law to administer executive government in the part of British India in which the Act containing such expression shall operate, and shall include a Chief Commissioner; "Local Government."

"High Court."

(11.) "High Court" shall mean the highest civil Court of appeal in such part;

"District Judge."

(12.) "District Judge" shall mean the Judge of a principal civil Court of original jurisdiction; but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;

"Magistrate."

(13.) "Magistrate" shall include all persons exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure;

"Barrister."

(14.) "Barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland;

"Section."

(15.) "Section" shall denote a section of the Act in which the word occurs;

"Will."

(16.) "Will" shall include a codicil and every writing making a voluntary posthumous distribution of property;

"Oath," "swear" and "affidavit."

(17.) "Oath," "swear" and "affidavit" shall include affirmation, declaration, affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing;

"Imprisonment."

(18.) "Imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code;

"Son." "Father."

(19.) And in the case of any one whose personal law permits adoption, "son" shall include an adopted son, and "father" an adoptive father.

3. In all Acts made by the Governor General of India in Council after this Act shall have come into operation—

Revival of repealed enactments.

(1) for the purpose of reviving, either wholly or partially, a Statute, Act or Regulation repealed, it shall be necessary expressly to state such purpose;

Commencement of time.

(2) for the purpose of excluding the first in a series of days or any other period of time, it shall be sufficient to use the word "from;"

Termination of time.

(3) for the purpose of including the last in a series of days or any other period of time, it shall be sufficient to use the word "to;"

Official chiefs and subordinates.

(4.) for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully executing the duties of such office in the place of their superior, it shall be sufficient to prescribe the duty of the superior;

Successors.

(5) for the purpose of indicating the relation of a law to the successors of any functionaries, or of corporations having perpetual succession, it shall be sufficient to express its relation to the functionaries or corporations; and

Substitution of functionaries.

(6) for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, it shall be sufficient to mention the official title of the officer at present execut-

ing such functions, or that of officer by whom the functions are commonly executed.

4. Whenever by any Act or Regulation now in force or hereafter to be in force, any duty of customs or excise, or in the nature thereof, is leviable on any given quantity, by weight, measure or value, of any goods or merchandize, a like duty shall be leviable according to the same rate on any greater or less quantity. Duty may be taken *pro rata.*

5. The provisions of sections sixty-three to seventy, both inclusive, of the Indian Penal Code, and of section three hundred and seven[a] of the Code of Criminal Procedure, shall apply to all fines imposed under the authority of any Act hereafter to be passed, unless such Act shall contain an express provision to the contrary. Recovery of fines.

6. The repeal of any Statute, Act or Regulation, shall not affect anything done, or any offence committed, or any fine or penalty incurred, or any proceedings[b] commenced, before the repealing Act shall have come into operation. Matters done under enactment before its repeal, unaffected.

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## ACT No. X of 1868.

*Received the Governor General's assent on the 2nd April* 1868.

### An Act to amend the Consolidated Customs Act.[c]

WHEREAS section 132 of the Consolidated Customs' Act (No. VI of 1863) provides that no refund of duty levied upon goods not shipped, or upon goods shipped and afterwards relanded, shall be allowed, unless application to reland shall have been made, or notice of nonshipment shall have been given, before the vessel on which such goods were intended to be shipped, or from which they were relanded, shall have left the port; And whereas it is expedient to extend the time within which such application or notice may be made or given; It is hereby enacted as follows :— Preamble.

1. For the proviso contained in the said section, the following shall be substituted :— Amendment of Act No. VI of 1863, section 132.

"Provided that no such refund shall be allowed unless application to reland shall have been made, or notice of nonshipment shall have been given, within three clear working days after the vessel on which such goods were intended to be shipped, or from which they were relanded, shall have left the port."

2. This Act may be called the "Consolidated Customs' Act Amendment Act." Short title.

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[a] See section 2 and schedule V of Act No. X of 1872.

[b] This includes a suit in which a decree has been given, 6 Bomb., A. C. J., 169.

[c] Declared to apply to the whole of British India, except the Scheduled Districts, Act No. XV of 1874.

## ACT No. XII OF 1868.

*Received the Governor General's assent on the 11th February 1868.*

# An Act to empower the Governor General of India in Council to suspend the operation of section 17 of Act No. XI of 1841.

Power to suspend Act No. XI of 1841, section 17.

1. IT shall be lawful for the Governor General of India in Council, by notification in the *Gazette of India*, to suspend in any military cantonment beyond the limits of British India the operation of section seventeen[a] of Act No. XI of 1841 (*for consolidating and amending the Regulations concerning Military Courts of Requests for Native officers and soldiers in the service of the East India Company*) from such day as shall be specified in the said notification until further notice, or to such other day as shall be specified in such notification.

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## ACT No. XIV OF 1868.

*Received the Governor General's assent on the 17th April 1868.*

# An Act for the Prevention of certain Contagious Diseases.[b]

Preamble.

WHEREAS it is expedient to provide for the better prevention of certain contagious diseases; It is hereby enacted as follows :—

*Preliminary.*

Short title.

1. This Act may be cited as "The Indian Contagious Diseases' Act, 1868."

Interpretation-clause. "Magistrate,"

2. In this Act—

"Magistrate" means any person exercising the powers of a Magistrate, or of a subordinate Magistrate of the first class, and includes a Magistrate of Police in a presidency-town :

"Contagious disease." "Brothel-keeper."

"Contagious disease" means any contagious venereal disease :

"Brothel-keeper" means the occupier of any house, room or place to or in which women resort or are for the purpose of prostitution, and every person managing or assisting in the management of any such house, room or place.

Extent of Act.

3. The places to which this Act applies shall be such places as the Local Government shall from time to time, with the previous sanction of the Governor General of India in Council, specify by notification in the official Gazette.

Limits of places where Act operates.

The limits of such places shall, for the purposes of this Act, be such as are defined in the said notification, and may from time to time, with such sanction as aforesaid, be altered by a like notification.

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[a] The operation of this section has been suspended in the Cantonments of Sikandarábád, Morár and Mau.

[b] Some of the provisions of this Act are taken from 29 Vic., c. 35, ss. 8, 21, 22, 36.

*Unregistered Prostitutes and Brothel-keepers.*

4. In any place to which this Act applies, no woman shall carry on the business of a common prostitute, and no person shall carry on the business of a brothel-keeper, without being registered under this Act at such place, and without having in her or his possession such evidence of registration as hereinafter provided.

Prostitutes and brothel-keepers to be registered.

Any woman carrying on the business of a common prostitute, and any person carrying on the business of a brothel-keeper, without having been registered as aforesaid, or without having in her or his possession such evidence as aforesaid, shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one month, or with fine not exceeding one hundred rupees, or with both.

Punishment for not registering.

*Registration of Prostitutes and Brothel-keepers.*

5. The Local Government shall make rules for the registration of common prostitutes and of brothel-keepers, and shall appoint officers for the conduct of such registration, and may, with the previous sanction of the Governor General of India in Council, assign salaries and establishments to the said officers.

Local Government to make rules for registration and appoint officers.

The Local Government shall also provide such books and forms as may be necessary for the purposes of this Act.

To provide books and forms.

Every woman complying with such rules (so far as they relate to prostitutes) and every brothel-keeper complying with such rules (so far as they relate to brothel-keepers) shall be deemed to be registered under this Act, and the registering officer shall furnish her or him with such evidence of registration as the Local Government shall from time to time direct.

Compliance with rules deemed to be registration.

The name, age, caste (if any) and residence of every such woman, and such other particulars respecting her as the Local Government shall from time to time direct, shall be entered in a book to be kept for that purpose.

Particulars to be recorded as to prostitutes.

The name and residence of every such brothel-keeper and the situation of the house, room or place in which he carries on his business shall be entered in a book to be kept for that purpose.

As to brothel-keepers.

6. Whenever any such woman changes her residence, she shall give notice thereof to such person and in such manner as the Local Government shall from time to time direct, and the necessary alterations shall be made in the said book and in the evidence of registration furnished to her as aforesaid.

Notice to be given of prostitute's change of residence.

Any such woman failing to give notice as aforesaid shall, on conviction before a Magistrate, be punished with imprisonment for a term which may

Punishment for default.

extend to fourteen days, or with fine not exceeding fifty rupees, or with both.

Notice of change in case of brothel-keeper.

Whenever any brothel-keeper changes his residence, or acquires or enters into the occupation of any such house, room or place as last aforesaid, other than the house, room or place of which the situation has been registered as aforesaid, he shall give notice thereof to such person and in such manner as the Local Government shall from time to time direct, and the necessary alterations or additions shall be made in or to the said book and in the evidence of registration furnished to him as aforesaid.

Punishment for default.

Any such brothel-keeper failing to give notice as last aforesaid shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one month, or with fine not exceeding one hundred rupees, or with both.

*Refusal to show Evidence of Registration.*

Penalty for refusing to show evidence of registration.

7. Any registered woman or brothel-keeper who, without reasonable excuse, neglects or refuses to produce and show the evidence of her or his registration with which she or he shall have been furnished as aforesaid, when required so to do by such officer as the Local Government shall from time to time appoint in this behalf, shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to fourteen days, or with fine not exceeding fifty rupees, or with both.

Information to be given of officers authorized to make requisition.

Information of the class of officers for the time being authorized to make requisitions under this section shall be furnished to registered women and brothel-keepers, under such rules as the Local Government shall from time to time prescribe.

*Special Provisions relating to Brothels.*

Penalty for permitting unregistered prostitutes to resort to brothels.

8. If any brothel-keeper, whether registered as such under this Act or not, has reasonable cause to believe any woman to be a prostitute and not to be registered under this Act, and induces or suffers her to resort or be, for the purpose of prostitution, to or in the house, room or place in which he carries on his said business, he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Proviso.

Provided that nothing in this or any other section of this Act shall exempt the offender from any penal or other consequences to which he may be liable for keeping or being concerned in keeping a brothel or disorderly house, or for the nuisance thereby occasioned.

9. Every such brothel-keeper shall be legally bound to furnish information on any subject relating to his business to such officers and in such manner and at such times as the Local Government shall from time to time prescribe in this behalf. Brothel-keepers legally bound to furnish information.

Every such officer shall, for the purposes of this section, be deemed to be a public servant.

*Examination of Prostitutes.*

10. The Local Government shall have power to appoint persons to make periodical examinations of registered women in order to ascertain whether at the time of each such examination they are affected with contagious disease. Examination of prostitutes.

11. For each of the places to which this Act applies, the Local Government may make rules consistent with this Act respecting the times and places of examination under this Act at that place, and generally respecting the arrangements for the conduct of those examinations, and for recording the results thereof; and a copy of rules purporting to be rules under this section shall, if signed by a secretary to such Government, be evidence of such rules for the purposes of this Act. Local Government may make rules as to examinations.

The Local Government may also require the persons making such examination to send in reports to such persons at such times and in such form as the Local Government shall from time to time prescribe. Reports.

Any person not a medical officer appointed to make such examination, and any registered woman,[a] disobeying any rule made under this section, shall, on conviction before a Magistrate, be punished with simple imprisonment for a term which may extend to one month, or with fine not exceeding one hundred rupees, or with both. Penalty for disobeying rules.

*Certified Hospitals.*

12. The Local Government may from time to time provide any buildings or parts of buildings as hospitals for the purposes of this Act. Local Government may provide and certify hospitals.

Any building or part of a building so provided and certified in writing by a secretary to the Local Government to be so provided, shall be deemed a certified hospital under this Act.

Every certified hospital so provided shall be placed under the control and management of such persons as to the Local Government shall from time to time seem fit. Control of such hospitals.

13. The Local Government shall make regulations for the inspection, management, and government of the hospitals as far as regards women author- Regulations for manage-

[a] 3 Beng. Ap. Cr. Jur. 70.

ment of hospitals.

ized by this Act to be detained therein for medical treatment, or being therein under medical treatment, for a contagious disease.

A copy of regulations purporting to be regulations made under this section shall, if signed by a secretary to such Government, be evidence of such regulations for the purposes of this Act.

Registered prostitutes on receiving notice to go to hospital.

14. Any woman registered under this Act shall, on receiving notice from any such officer as the Local Government shall from time to time appoint in this behalf, proceed to the certified hospital named in such notice and place herself there for medical treatment.

Penalty for neglect or refusal.

If after the notice is delivered to her, she neglects or refuses to proceed to the said hospital within the time specified in the said notice, an officer of Police shall apprehend her and convey her with all practicable speed to such hospital, and place her there for medical treatment.

Detention of prostitutes under medical treatment.

15. Whenever any such woman affected with contagious disease places herself or is placed as aforesaid in a certified hospital for medical treatment, she shall be detained there for that purpose by such medical officer of the hospital as the Local Government shall from time to time appoint in this behalf until discharged by him by writing under his hand.

Medical treatment, lodging, clothing and food shall be provided gratis for every such woman during her detention in the hospital.

Leaving hospital before discharge.

16. If any woman authorized by such medical officer to be detained in a certified hospital for medical treatment, quits the hospital without being discharged therefrom by the chief medical officer thereof, by writing under his hand (the proof whereof shall lie on the accused), or

Disobeying hospital-regulations.

if any woman authorized by this Act to be detained in a certified hospital for medical treatment, or any woman being in a certified hospital under medical treatment, for a contagious disease, refuses or wilfully neglects while in the hospital to conform to the regulations thereof approved under this Act,

Punishment.

then and in every such case such woman shall, on conviction before a Magistrate, be punished with imprisonment, in the case of a first offence, for any term not exceeding one month, and in the case of a second or any subsequent offence, for any term not exceeding three months ; and in case she quits the hospital without being discharged as aforesaid, she may be taken into custody without warrant by any officer of Police.

Procedure on close of imprisonment.

On the expiration of her term of imprisonment under this section, such woman shall be sent back from the prison to the certified hospital, and shall be detained there unless the medical officer of the prison at the time of her discharge from imprisonment certifies in writing that she is free from contagious disease (the proof of which certificate shall lie on her).

*Out-door Treatment of Prostitutes.*

17. It shall be lawful for the Local Government to empower such surgeons or other persons as it shall from time to time appoint, to prescribe, by order to be served on any woman registered under this Act, who has not received a notice under section fourteen, the times and places at which she shall attend for medical treatment, and, if necessary, the medical treatment to which she shall submit.

Power to provide for out-door treatment of registered women.

Every such woman disobeying or failing to comply with any such order, shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to a month, or with fine not exceeding one hundred rupees, or with both.

Punishment for disobedience.

18. If any registered woman on whom such order as last aforesaid shall have been served, conducts herself as a common prostitute before such surgeon or other person empowered as last aforesaid certifies in writing to the effect that she is then free from a contagious disease (the proof of which certificate shall lie on her), she shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine not exceeding five hundred rupees, or with both.

Penalty for acting as prostitute while under medical treatment.

19. During the interval between the service of such order upon any registered woman and the granting of such certificate, an allowance for her subsistence shall be provided, of such amount and in such manner as the Local Government shall from time to time prescribe.

Subsistence-allowance.

*Segregation of Prostitutes.*

20. In any place to which the Local Government shall, by notification in the official Gazette, have specially extended this section, it shall be lawful for such officer as the Local Government shall from time to time appoint in this behalf, to cause a notice to be served on any registered woman, requiring her, after an interval of not less than seven days to be mentioned in the notice, not to reside in any street or place therein specified.

Power to prohibit residing in street or place specified.

Any registered woman on whom such notice shall have been served disobeying the requisition therein contained shall, on conviction before a Magistrate, be punished with imprisonment, in the case of a first offence, for any term not exceeding one month, and in the case of a second or any subsequent offence, for any term not exceeding three months.

Penalty for disobedience.

*Removal from Registry.*

21. The Local Government shall lay down rules prescribing a procedure in accordance with which any woman registered under this Act and desirous

Removal of name from registry.

of ceasing to carry on the business of a common prostitute in the place at which she is registered and of having her name removed from the said book may have her name removed accordingly.

*Miscellaneous.*

Institution of prosecutions.

22. No prosecution shall be instituted under this Act except at the instance of such officer as the Local Government shall from time to time appoint in this behalf.

Presumption as to signatures.

23. In any proceeding under this Act, any notice, order, certificate, copy of regulations or other document purporting to be signed by any person in the service of Government, or by any person whom the Local Government shall have, in exercise of the powers conferred on it by this Act, appointed to sign such document, shall on production be received in evidence and shall be presumed to have been duly signed by the person and in the character by whom and in which it purports to be signed, until the contrary is shown.

Service of notice.

24. Every notice and order required by this Act to be served on a woman shall be served by delivery thereof either to her personally or to some person for her at her usual place of abode.

Limitation of suits.

25. Any suit against any person for anything done in pursuance of this Act, shall be commenced within three months after the thing done, and not otherwise. [a]

Notice to defendant.

Notice in writing of every such suit and of the cause thereof shall be given to the intended defendant one month at least before the commencement of the suit.

Bar to recovery by plaintiff.

The plaintiff shall not recover if tender of sufficient amends is made before suit, or if a sufficient sum of money is paid into Court after suit brought, by or on behalf of the defendant.

Power to make rules.

26. The Local Government shall have power from time to time to declare by what officer anything directed to be done by this Act shall be done, and by what class of officers information regarding anything made an offence by this Act shall be exclusively furnished.

The Local Government may also from time to time make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement.

The Local Government may also from time to time alter and add to any rules or regulations made under this Act: Provided that such alterations and additions are not inconsistent with any of the provisions hereinbefore contained.

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[a] Repealed, so far as relates to the limitation of suits, by Act No. IX of 1871.

## ACT No. XXVI OF 1868.

*Received the Governor General's assent on the 15th October* 1868.

### An Act to enable Municipalities to provide for Lock-hospitals.

WHEREAS it is expedient to enable all municipalities in British India to provide out of the municipal funds for the maintenance of lock-hospitals, and generally for the prevention of contagious venereal disease; It is hereby enacted as follows:— Preamble.

1. Notwithstanding anything contained in any Act of the Governor General of India in Council, of the Governor of Madras in Council, of the Governor of Bombay in Council, of the Lieutenant Governor of Bengal in Council, or in any other law for the time being in force, Power to municipal committees to devote funds to maintaining lock-hospitals, &c.

it shall be lawful for every municipal corporation, municipal committee, or other body of persons duly appointed to conduct the affairs of a municipality in British India, to pay, with the previous sanction of the Local Government, out of the funds at their disposal

towards the maintenance of the hospital provided under section twelve of Act No. XIV of 1868 (*for the prevention of certain contagious diseases*) within the limits of the place for which they are so appointed,

and towards defraying the cost of the medical treatment, lodging, clothing and food of the women detained in such hospital, and of the allowance provided under section nineteen of the same Act for the subsistence of prostitutes residing within the limits aforesaid,

such part as may from time to time be agreed on by and between the corporation, committee or body and the Local Government, of the total cost of the said maintenance, treatment, lodging, clothing, food and allowance as annually estimated by such Government.

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## ACT No. II OF 1869.

*Received the Governor General's assent on the 12th February* 1869.

### An Act for the appointment of Justices of the Peace.

WHEREAS it is expedient to consolidate and amend the law relating to the appointment of Justices of the Peace; It is hereby enacted as follows:— Preamble.

1. This Act may be called "The Justices of the Peace Act, 1869." Short title.

2. [*Repealed by Act No. XIV of* 1870.]

Appointment of Justices of the Peace for Mofussil.

3. The Governor General of India in Council, so far as regards the whole or any part of British India (other than the towns of Calcutta, Madras and Bombay),

and every Local Government, so far as regards the territories subject to its government or administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such and so many of the covenanted civil servants of the Crown in India, or other British inhabitants, as the said Governor General in Council or the Local Government (as the case may be) shall think properly qualified to act as Justices of the Peace within and for the territories mentioned in such notification.

Appointment of Justices of the Peace for presidency-towns.

4. The Governor General of India in Council or the Local Government, so far as regards the town of Calcutta,

and the Local Government, so far as regards the towns of Madras and Bombay,

may, by notification in the official Gazette, appoint any persons resident within British India and not being the subjects of any foreign State whom such Governor General in Council or Local Government (as the case may be) shall think properly qualified to act as Justices of the Peace within the limits of the town mentioned in such notification.

Powers and duties of Justices of the Peace.

5. All persons appointed under section three or section four shall be Justices of the Peace and shall have authority to act as such, and shall have power to commit for trial European British subjects of Her Majesty to the Court prescribed in that behalf by the law in force for the time being, and shall do all other acts appertaining to the office of Justice of the Peace which under or by virtue of any law in force for the time being may be done by a Justice of the Peace within the said territories or towns, as the case may be.

Powers of Justices of the Peace in Native States.

6. All persons being servants of Government appointed by the Governor General in Council to act as Justices of the Peace for the whole of British India,

and all persons being servants of Government appointed by a Local Government to act as Justices of the Peace for the territories subject to such Government other than the towns aforesaid,

shall, so far as regards European British and Christian subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty, have power to act as Justices of the Peace and to commit such subjects for trial according to law.

7, 8. [*Repealed by Act No. X of* 1873.]

Power to suspend or dismiss.

9. The Governor General of India in Council in the case of any Justice of the Peace appointed by him, and the Local Government in the case of

any Justice of the Peace appointed by it, may suspend or dismiss any person so appointed.

10. Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns under any commission issued by any of the said High Courts, shall be deemed to have been appointed under section three by the said Governor General in Council to act as a Justice of the Peace for the whole of British India.

Present Justices of the Peace deemed appointed under Act.

Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section four by the Local Government.

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# THE INDIAN DIVORCE ACT, 1869.

## CONTENTS.

Preamble.

*I.—Preliminary.*

SECTION.

1. Short title.
   Commencement of Act.
2. Extent of Act.
   Extent of power to grant relief generally and to make decrees of dissolution and nullity.
3. Interpretation-clause.

*II.—Jurisdiction.*

4. Matrimonial jurisdiction of High Courts to be exercised subject to Act.
   Exception.
5. Enforcement of decrees or orders made heretofore by Supreme or High Court.
6. Pending suits.
7. Court to act on principles of English Divorce Court.
8. Extraordinary jurisdiction of High Court.
   Power to transfer suits.
9. Reference to High Court.

*III.—Dissolution of Marriage.*

10. When husband may petition for dissolution.
When wife may petition for dissolution.
Contents of petition.
11. Adulterer to be co-respondent.
12. Court to be satisfied of absence of collusion.
13. Dismissal of petition.
14. Power to Court to pronounce decree for dissolving marriage.
Condonation.
15. Relief in case of opposition on certain grounds.
16. Decrees for dissolution to be *nisi*.
Collusion.
17. Confirmation of decree for dissolution by District Judge.

*IV.—Nullity of Marriage.*

18. Petition for decree of nullity.
19. Grounds of decree.
20. Confirmation of District Judge's decree.
21. Children of annulled marriage.

*V.—Judicial Separation.*

22. Bar to decree for divorce *a mensâ et toro*; but judicial separation obtainable by husband or wife.
23. Application for separation made by petition.
24. Separated wife deemed spinster with respect to after-acquired property.
25. Separated wife deemed spinster for purposes of contract and suing.

*Reversal of Decree of Separation.*

26. Decree of separation obtained during absence of husband or wife may be reversed.

*VI.—Protection-orders.*

27. Deserted wife may apply to Court for protection.
28. Court may grant protection-order.
29. Discharge or variation of orders.
30. Liability of husband seizing wife's property after notice of order.
31. Wife's legal position during continuance of order.

SECTION.

*VII.—Restitution of Conjugal Rights.*

32. Petition for restitution of conjugal rights.
33. Answer to petition.

*VIII.—Damages and Costs.*

34. Husband may claim damages from adulterer.
35. Power to order adulterer to pay costs.
Power to order litigious intervenor to pay costs.

*IX.—Alimony.*

36. Alimony *pendente lite.*
37. Power to order permanent alimony.
Power to order monthly or weekly payments.
38. Court may direct payment of alimony to wife or to her trustee.

*X.—Settlements.*

39. Power to order settlement of wife's property for benefit of husband and children.
Settlement of damages.
40. Inquiry into existence of ante-nuptial or post-nuptial settlements.

*XI.—Custody of Children.*

41. Power to make orders as to custody of children in suit for separation.
42. Power to make such orders after decree.
43. Power to make orders as to custody of children in suits for dissolution or nullity.
44. Power to make such orders after decree or confirmation.

*XII.—Procedure.*

45. Code of Civil Procedure to apply.
46. Forms of petitions and statements.
47. Stamp on petition.
Petition to state absence of collusion.
Statements to be verified.
48. Suits on behalf of lunatics.
49. Suits by minors.
50. Service of petition.

SECTION.

51. Mode of taking evidence.
52. Competence of husband and wife to give evidence as to cruelty or desertion.
53. Power to close doors.
54. Power to adjourn.
55. Enforcement of and appeals from orders and decrees.
    No appeal as to costs.
56. Appeal to Queen in Council.

*XIII.—Remarriage.*

57. Liberty to parties to marry again.
58. English clergyman not compelled to solemnize marriages of persons divorced for adultery.
59. English minister refusing to perform ceremony to permit use of his church.

*XIV.—Miscellaneous.*

60. Decree for separation or protection-order valid as to persons dealing with wife before reversal.
    Indemnity of persons making payment to wife without notice of reversal of decree or protection-order.
61. Bar of suit for criminal conversation.
62. Power to make rules.

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## SCHEDULE OF FORMS.

Nos.

1. Petition by husband for a dissolution of marriage with damages against co-respondent, by reason of adultery.
2. Respondent's statement in answer to No. 1.
3. Co-respondent's statement in answer to No. 1.
4. Petition for decree of nullity of marriage.
5. Petition by wife for judicial separation on the ground of her husband's adultery.
6. Statement in answer to No. 5.
7. Statement in reply to No. 6.
8. Petition for a judicial separation by reason of cruelty.

Nos.

9. Statement in answer to No. 8.
10. Petition for reversal of decree of separation.
11. Petition for protection-order.
12. Petition for alimony pending the suit.
13. Statement in answer to No. 12.
14. Undertaking by minor's next friend to be answerable for respondent's costs.

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## ACT No. IV OF 1869.

*Received the Governor General's assent on the 26th February* 1869.

## An Act to amend the law relating to Divorce and Matrimonial Causes in India.[a]

WHEREAS it is expedient to amend the law relating to the divorce of persons professing the Christian religion, and to confer upon certain Courts jurisdiction in matters matrimonial; It is hereby enacted as follows:— Preamble.

### *I.—Preliminary.*

1. This Act may be called "The Indian Divorce Act," and shall come into operation on the first day of April 1869. Short title. Commencement of Act.

2. This Act shall extend to the whole of British India, and (so far only as regards British subjects within the dominions hereinafter mentioned) to the dominions of Princes and States in India in alliance with Her Majesty. Extent of Act.

Nothing hereinafter contained shall authorize any Court to grant any relief under this Act, except in cases where the petitioner professes the Christian religion and resides in India at the time of presenting the petition, Extent of power to grant relief generally.

or to make decrees of dissolution of marriage except in the following cases:—(*a*) where the marriage shall have been solemnized in India; or (*b*) where the adultery, rape or unnatural crime complained of shall have been committed in India; or (*c*) where the husband has, since the solemnization of the marriage, exchanged his profession of Christianity for the profession of some other form of religion; And to make decrees of dissolution

or to make decrees of nullity of marriage except in cases where the marriage has been solemnized in India. and nullity.

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[a] This Act extends to India the principal provisions of 20 & 21 Vic., c. 85, as amended by 22 & 23 Vic., c. 61; 23 & 24 Vic., c. 144, and 29 Vic., c. 32. It also embodies many rulings of Sir Cresswell Cresswell and Lord Penzance.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"High Court."

(1). "High Court" means, in any Regulation province—the Court there established under the Act of the twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four;

in the territories for the time being subject to the government of the Lieutenant-Governor of the Panjáb—the Chief Court of the Panjáb;

in British Burma—the High Court of Judicature at Fort William in Bengal,

and in any other Non-Regulation province and in any place in the dominions of the Princes and States of India in alliance with Her Majesty—the High Court or Chief Court to whose original criminal jurisdiction the petitioner is for the time being subject, or would be subject if he or she were an European British subject of Her Majesty:

In the case of any petition under this Act, 'High Court' is that one of the aforesaid Courts within the local limits of whose ordinary appellate jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together:

"District Judge."

(2). "District Judge" means, in the Regulation provinces—a Judge of a principal civil Court of original jurisdiction;

in the Non-Regulation provinces, other than British Burma and Sindh—a Commissioner of a Division;

in Pegu—the Recorder at Rangoon;

in Arakan—the Recorder at Rangoon until a Recorder's Court is established at Akyab, and thenceforward the Recorder at Akyab;

in the Tenasserim Provinces—the Recorder at Maulmain; [a]

in Sindh—the Judicial Commissioner in that province,

and in any place in the dominions of the Princes and States aforesaid—such officer as the Governor General of India in Council shall from time to time appoint in this behalf by notification in the *Gazette of India*, and, in the absence of such officer, the High Court in the exercise of its original jurisdiction under this Act:

"District Court."

(3). "District Court" means, in the case of any petition under this Act, the Court of the District Judge within the local limits of whose ordinary jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together:

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[a] Now see the Burma Courts Act, No. XVII of 1875, s. 51.

(4). "Court" means the High Court or the District Court, as the case may be: "Court."

(5). "Minor children" means, in the case of sons of Native fathers, boys who have not completed the age of sixteen years, and, in the case of daughters of Native fathers, girls who have not completed the age of thirteen years; In other cases it means unmarried children who have not completed the age of eighteen years: "Minor children."

(6). "Incestuous adultery" means adultery committed by a husband with a woman with whom, if his wife were dead, he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity (whether natural or legal) or affinity: "Incestuous adultery."

(7). "Bigamy with adultery" means adultery with the same woman with whom the bigamy was committed: "Bigamy with adultery."

(8). "Marriage with another woman" means marriage of any person, being married, to any other person, during the life of the former wife, whether the second marriage shall have taken place within the dominions of Her Majesty or elsewhere: "Marriage with another woman."

(9). "Desertion" implies an abandonment against the wish of the person charging it; and "Desertion."

(10). "Property" includes, in the case of a wife, any property to which she is entitled for an estate in remainder or reversion, or as a trustee, executrix or administratrix; and the date of the death of the testator or intestate shall be deemed to be the time at which any such wife becomes entitled as executrix or administratrix. "Property."

## *II.—Jurisdiction.*

**4.** The jurisdiction now exercised by the High Courts in respect of divorce *a mensâ et toro*, and in all other causes, suits and matters matrimonial, shall be exercised by such Courts and by the District Courts subject to the provisions in this Act contained, and not otherwise:[a] except so far as relates to the granting of marriage-licenses, which may be granted as if this Act had not been passed. Matrimonial jurisdiction of High Courts to be exercised subject to Act. Exception.

**5.** Any decree or order of the late Supreme Court of Judicature at Calcutta, Madras or Bombay sitting on the ecclesiastical side, or of any of the said High Courts sitting in the exercise of their matrimonial jurisdiction, respectively, in any cause or matter matrimonial, may be enforced and dealt with by the said High Courts, respectively, as hereinafter mentioned, in like Enforcement of decrees or orders made heretofore by Supreme or High Court.

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[a] See *Gasper* v. *Gonsalves*, 13 Beng. 112.

manner as if such decree or order had been originally made under this Act by the Court so enforcing or dealing with the same.

Pending suits.

6. All suits and proceedings in causes and matters matrimonial, which when this Act comes into operation are pending in any High Court, shall be dealt with and decided by such Court, so far as may be, as if they had been originally instituted therein under this Act.

Court to act on principles of English Divorce Court.

7. Subject to the provisions contained in this Act, the High Courts and District Courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the said Courts, are as nearly as may be conformable to the principles and rules on which the Court or Divorce and Matrimonial Causes in England for the time being acts and gives relief.

Extraordinary jurisdiction of High Court.

8. The High Court may, whenever it thinks fit, remove and try and determine as a Court of original jurisdiction any suit or proceeding instituted under this Act in the Court of any District Judge within the limits of its jurisdiction under this Act.

Power to transfer suits.

The High Court may also withdraw any such suit or proceeding, and transfer it for trial or disposal to the Court of any other such District Judge.

Reference to High Court.

9. When any question of law or usage having the force of law arises at any point in the proceedings previous to the hearing of any suit under this Act by a District Court or at any subsequent stage of such suit, or in the execution of the decree therein or order thereon,

the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the case and refer it, with the Court's own opinion thereon, to the decision of the High Court.

If the question has arisen previous to or in the hearing, the District Court may either stay such proceedings, or proceed in the case pending such reference, and pass a decree contingent upon the opinion of the High Court upon it.

If a decree or order has been made, its execution shall be stayed until the receipt of the order of the High Court upon such reference.

*III.—Dissolution of Marriage.*

When husband may petition for dissolution.

10. Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery.

When wife may petition for dissolution.

Any wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved on the ground that, since the solemnization thereof, her husband has exchanged his profession of Chris-

[a] See 4 Beng., O. C. J., 51.

tianity for the profession of some other religion, and gone through a form of marriage with another woman;

or has been guilty of incestuous adultery,

or of bigamy with adultery,

or of marriage with another woman with adultery,

or of rape, sodomy or bestiality,

or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensâ et toro*,

or of adultery coupled with desertion, without reasonable excuse, for two years or upwards.

Every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded. Contents of petition.

**11.** Upon any such petition presented by a husband, the petitioner shall make the alleged adulterer a co-respondent to the said petition, unless he is excused from so doing on one of the following grounds, to be allowed by the Court:— Adulterer to be co-respondent.

(1).—That the respondent is leading the life of a prostitute,[a] and that the petitioner knows of no person with whom the adultery has been committed:

(2).—That the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts to discover it:

(3).—That the alleged adulterer is dead.

**12.** Upon any such petition for the dissolution of a marriage, the Court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery, or has condoned the same, and shall also inquire into any counter-charge which may be made against the petitioner. Court to be satisfied of absence of collusion.

**13.** In case the Court, on the evidence in relation to any such petition, is satisfied that the petitioner's case has not been proved, or is not satisfied that the alleged adultery has been committed, Dismissal of petition.

or finds that the petitioner has, during the marriage, been accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

then and in any of the said cases the Court shall dismiss the petition.

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[a] *Roe* v. *Roe*, 3 Beng., Appendix 10.

When a petition is dismissed by a District Court under this section, the petitioner may, nevertheless, present a similar petition to the High Court.

Power to Court to pronounce decree for dissolving marriage.

**14.** In case the Court is satisfied on the evidence that the case of the petitioner has been proved,

and does not find that the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

the Court shall pronounce a decree declaring such marriage to be dissolved in the manner and subject to all the provisions and limitations in sections sixteen and seventeen made and declared:

Provided that the Court shall not be bound to pronounce such decree if it finds that the petitioner has, during the marriage, been guilty of adultery,

or if the petitioner has, in the opinion of the Court, been guilty of unreasonable delay in presenting or prosecuting such petition,

or of cruelty towards the other party to the marriage,

or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse,

or of such wilful neglect or misconduct of or towards the other party as has conduced to the adultery.[a]

Condonation.

No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal cohabitation has been resumed or continued.

Relief in case of opposition on certain grounds.

**15.** In any suit instituted for dissolution of marriage, if the respondent opposes the relief sought on the ground, in case of such a suit instituted by a husband, of his adultery, cruelty, or desertion without reasonable excuse, or, in case of such a suit instituted by a wife, on the ground of her adultery and cruelty, the Court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief, and the respondent shall be competent to give evidence of or relating to such cruelty or desertion.

Decrees for dissolution to be *nisi*.

**16.** Every decree for a dissolution of marriage made by a High Court, not being a confirmation of a decree of a District Court, shall, in the first instance, be a decree *nisi*, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

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[a] *Gordon* v. *Gordon*, 3 Beng., O. C. J., 139.

During that period any person [a] shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court. Collusion.

On cause being so shown, the Court shall deal with the case by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry, or otherwise as justice may demand.

The High Court may order the costs of Counsel and witnesses, and otherwise arising from such cause being shown, to be paid by the parties or such one or more of them as it thinks fit, including a wife if she have separate property.

Whenever a decree *nisi* has been made, and the petitioner fails, within a reasonable time, to move to have such decree made absolute, the High Court may dismiss the suit.

17. Every decree for a dissolution of marriage made by a District Judge shall be subject to confirmation by the High Court. Confirmation of decree for dissolution by District Judge.

Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the Judges of the High Court is three or upwards) by a Court composed of three such Judges, and in case of difference the opinion of the majority shall prevail, or (where the number of the Judges of the High Court is two) by a Court composed of such two Judges, and in case of difference the opinion of the senior Judge shall prevail.

The High Court, if it think further enquiry or additional evidence to be necessary, may direct such enquiry to be made, or such evidence to be taken.

The result of such enquiry and the additional evidence shall be certified to the High Court by the District Judge, and the High Court shall thereupon make an order confirming the decree for dissolution of marriage, or such other order as to the Court seems fit.

Provided that no decree shall be confirmed under this section till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

During the progress of the suit in the Court of the District Judge, any person suspecting that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce, shall be at liberty, in such manner as the High Court by general or special order from time to time

[a] Other than the parties against whom the decree was made, 4 Beng., O. C. J., 52.

directs, to apply to the High Court to remove the suit under section eight, and the High Court shall thereupon, if it think fit, remove such suit and try and determine the same as a Court of original jurisdiction, and the provisions contained in section sixteen shall apply to every suit so removed: or it may direct the District Judge to take such steps in respect of the alleged collusion as may be necessary to enable him to make a decree in accordance with the justice of the case.

### *IV.—Nullity of Marriage.*

Petition for decree of nullity.

**18.** Any husband or wife may present a petition to the District Court or to the High Court, praying that his or her marriage may be declared null and void.

Grounds of decree.

**19.** Such decree may be made on any of the following grounds:—[a]

(1).—That the respondent was impotent at the time of the marriage and at the time of the institution of the suit;

(2).—That the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;

(3).—That either party was a lunatic or idiot at the time of the marriage;

(4).—That the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.

Nothing in this section shall affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

Confirmation of District Judge's decree.

**20.** Every decree of nullity of marriage made by a District Judge shall be subject to confirmation by the High Court, and the provisions of section seventeen, clauses one, two, three and four, shall, *mutatis mutandis*, apply to such decrees.

Children of annulled marriage.

**21.** Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when a marriage is annulled on the ground of insanity, children begotten before the decree is made shall be specified in the decree, and shall be entitled to succeed, in the same manner as legitimate children, to the estate of the parent who at the time of the marriage was competent to contract.

### *V.—Judicial Separation.*

Bar to decree for divorce *a mensâ et*

**22.** No decree shall hereafter be made for a divorce *a mensâ et toro*, but the husband or wife may obtain a decree of judicial separation, on the ground

[a] And on no others, 13 Beng. 109.

of adultery, or cruelty, or desertion without reasonable excuse for two years or upwards, and such decree shall have the effect of a divorce *a mensâ et toro* under the existing law, and such other legal effect as hereinafter mentioned.

*toro* ; but judicial separation obtainable by husband or wife.

**23.** Application for judicial separation on any one of the grounds aforesaid, may be made by either husband or wife by petition to the District Court or the High Court ; and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.

Application for separation made by petition.

**24.** In every case of a judicial separation under this Act, the wife shall, from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.

Separated wife deemed spinster with respect to after-acquired property.

Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, go as the same would have gone if her husband had been then dead :

Provided that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

**25.** In every case of a judicial separation under this Act, the wife shall, whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding ; and her husband shall not be liable in respect of any contract, act or costs entered into, done, omitted or incurred by her during the separation :

Separated wife deemed spinster for purposes of contract and suing.

Provided that where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessaries supplied for her use.

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

*Reversal of Decree of Separation.*

**26.** Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may, at any time thereafter, present a petition to the Court by which the decree was pronounced, praying for a reversal of such decree, on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion, where desertion was the ground of such decree.

Decree of separation obtained during absence of husband or wife may be reversed.

The Court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly; but such reversal shall not prejudice or affect the rights or remedies which any other person would have had, in case it had not been decreed, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the sentence of separation and of the reversal thereof.

*VI.—Protection-orders.*

Deserted wife may apply to Court for protection.

27. Any wife to whom the fourth section of the Indian Succession Act, 1865, does not apply, may, when deserted by her husband, present a petition to the District Court or the High Court, at any time after such desertion, for an order to protect any property which she may have acquired or may acquire, and any property of which she may have become possessed or may become possessed after such desertion, against her husband or his creditors, or any person claiming under him.

Court may grant protection-order.

28. The Court, if satisfied of the fact of such desertion, and that the same was without reasonable excuse, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and other property from her husband and all creditors and persons claiming under him. Every such order shall state the time at which the desertion commenced, and shall, as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time.

Discharge or variation of orders.

29. The husband or any creditor of, or person claiming under, him may apply to the Court by which such order was made for the discharge or variation thereof, and the Court, if the desertion has ceased, or if for any other reason it think fit so to do, may discharge or vary the order accordingly.

Liability of husband seizing wife's property after notice of order.

30. If the husband or any creditor of, or person claiming under, the husband seizes or continues to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to return or deliver to her the specific property, and also to pay her a sum equal to double its value.

Wife's legal position during continuance of order.

31. So long as any such order of protection remains in force, the wife shall be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation.

*VII.—Restitution of Conjugal Rights.*

Petition for restitution of

32. When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, either wife or husband may apply,

by petition to the District Court or the High Court, for restitution of conjugal rights, and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

conjugal rights.

**33.** Nothing shall be pleaded in answer to a petition for restitution of conjugal rights, which would not be ground for a suit for judicial separation or for a decree of nullity of marriage.

Answer to petition.

*VIII.—Damages and Costs.*

**34.** Any husband may, either in a petition for dissolution of marriage or for judicial separation, or in a petition to the District Court or the High Court limited to such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner.

Husband may claim damages from adulterer.

Such petition shall be served on the alleged adulterer and the wife, unless the Court dispenses with such service, or directs some other service to be substituted.

The damages to be recovered on any such petition shall be ascertained by the said Court,[a] although the respondents or either of them may not appear.

After the decision has been given, the Court may direct in what manner such damages shall be paid or applied.

**35.** Whenever in any petition presented by a husband the alleged adulterer has been made a co-respondent, and the adultery has been established, the Court may order the co-respondent to pay the whole or any part of the costs of the proceedings :

Power to order adulterer to pay costs.

Provided that the co-respondent shall not be ordered to pay the petitioner's costs

(1) if the respondent was, at the time of the adultery, living apart from her husband and leading the life of a prostitute, or

(2) if the co-respondent had not, at the time of the adultery, reason to believe the respondent to be a married woman.

Whenever any application is made under section seventeen, the Court, if it thinks that the applicant had no grounds or no sufficient grounds for intervening, may order him to pay the whole or any part of the costs occasioned by the application.

Power to order litigious intervenor to pay costs.

*IX.—Alimony.*

**36.** In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may present a petition for alimony pending the suit.

Alimony *pendente lite.*

[a] *Kelly* v. *Kelly*, 3 Beng., O. C. J., 67.

Such petition shall be served on the husband ; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just :[a]

Provided that alimony pending the suit shall in no case exceed one-fifth of the husband's average nett income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

Power to order permanent alimony.

**37.** The High Court may, if it think fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife, [b]

and the District Judge may, if he thinks fit, on the confirmation of any decree of his, declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conductof the parties, it thinks reasonable ; [c] and for that purpose may cause a proper instrument to be executed by all necessary parties.

Power to order monthly or weekly payments.

In every such case the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable :

Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the Court seems fit.

Court may direct payment of alimony to wife or to her trustee.

**38.** In all cases in which the Court makes any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court seem expedient, and may from time to time appoint a new trustee, if it appears to the Court expedient so to do.

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[a] *Kelly* v. *Kelly*, 3 Beng., Appendix 4 : *Gordon* v. *Gordon*, ibid. 13.

[b] *Kelly* v. *Kelly*, 5 Beng. 71, 74.

[c] *Ord* v. *Ord*, 5 Beng., Appendix 34.

### *X.—Settlements.*

**39.** Whenever the Court pronounces a decree of dissolution of marriage or judicial separation for adultery of the wife, if it is made to appear to the Court that the wife is entitled to any property, the Court may, if it think fit, order such settlement as it thinks reasonable to be made of such property or any part thereof, for the benefit of the husband, or of the children of the marriage, or of both.

Power to order settlement of wife's property for benefit of husband and children.

Any instrument executed pursuant to any order of the Court at the time of or after the pronouncing of a decree of dissolution of marriage or judicial separation, shall be deemed valid notwithstanding the existence of the disability of coverture at the time of the execution thereof.

The Court may direct that the whole or any part of the damages recovered under section thirty-four shall be settled for the benefit of the children of the marriage, or as a provision for the maintenance of the wife.

Settlement of damages.

**40.** The High Court, after a decree absolute for dissolution of marriage, or a decree of nullity of marriage,

and the District Court, after its decree for dissolution of marriage or of nullity of marriage has been confirmed,

may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or a portion of the property settled, whether for the benefit of the husband or the wife, or of the children (if any) of the marriage, or of both children and parents, as to the Court seems fit :[a]

Inquiry into existence of ante-nuptial or post-nuptial settlements.

Provided that the Court shall not make any order for the benefit of the parents or either of them at the expense of the children.

### *XI.—Custody of Children.*

**41.** In any suit for obtaining a judicial separation the Court may from time to time, before making its decree, make such interim orders, and may make such provision in the decree, as it deems proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of such suit, and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the said Court.

Power to make orders as to custody of children in suit for separation.

**42.** The Court, after a decree of judicial separation, may upon application (by petition) for this purpose make, from time to time, all such orders

Power to make such orders after decree.

[a] *Wood* v. *Wood*, 14 Beng., Appendix 6.

and provision, with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree or by interim orders in case the proceedings for obtaining such decree were still pending.

Power to make orders as to custody of children in suits for dissolution or nullity.

43. In any suit for obtaining a dissolution of marriage or a decree of nullity of marriage instituted in, or removed to, a High Court, the Court may from time to time, before making its decree absolute or its decree (as the case may be), make such interim-orders, and may make such provision in the decree absolute or decree,

and in any such suit instituted in a District Court, the Court may from time to time, before its decree is confirmed, make such interim-orders, and may make such provision on such confirmation,

as the High Court or District Court (as the case may be) deems proper with respect to the custody, maintenance and education of the minor-children, the marriage of whose parents is the subject of the suit;

and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the Court.

Power to make such orders after decree or confirmation.

44. The High Court, after a decree absolute for dissolution of marriage or a decree of nullity of marriage,

and the District Court, after a decree for dissolution of marriage or of nullity of marriage has been confirmed,

may, upon application by petition for the purpose, make from time to time all such orders and provision, with respect to the custody, maintenance and education of the minor-children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree absolute or decree (as the case may be), or by such interim-orders as aforesaid.

## *XII.—Procedure.*

Code of Civil Procedure to apply.

45. Subject to the provisions herein contained, all proceedings under this Act between party and party shall be regulated by the Code of Civil Procedure.

Forms of petitions and statements.

46. The forms set forth in the schedule to this Act, with such variation as the circumstances of each case require, may be used for the respective purposes mentioned in such schedule.

Stamp on petition.

47. Every petition under this Act for a decree of dissolution of marriage, or of nullity of marriage, or of judicial separation, shall state that there is not any collusion or connivance between the petitioner and the other party to the marriage.

Petition to state absence of collusion.

The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints, and may at the hearing be referred to as evidence. Statements to be verified.

48. When the husband or wife is a lunatic or idiot, any suit under this Act (other than a suit for restitution of conjugal rights) may be brought on his or her behalf by the committee or other person entitled to his or her custody. Suits on behalf of lunatics.

49. Where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the Court; and no petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs. Suits by minors.

Such undertaking shall be filed in Court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

50. Every petition under this Act shall be served on the party to be affected thereby, either within or without British India, in such manner as the High Court by general or special order from time to time directs: Service of petition.

Provided that the Court may dispense with such service altogether in case it seems necessary or expedient so to do.

51. The witnesses in all proceedings before the Court, where their attendance can be had, shall be examined orally, and any party may offer himself or herself as a witness, and shall be examined, and may be cross-examined and re-examined, like any other witness: Mode of taking evidence.

Provided that the parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, or by direction of the Court, be subject to be cross-examined by or on behalf of the opposite party orally, and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

52. On any petition presented by a wife, praying that her marriage may be dissolved by reason of her husband having been guilty of adultery coupled with cruelty, or of adultery coupled with desertion without reasonable excuse, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion. Competence of husband and wife to give evidence as to cruelty or desertion.

53. The whole or any part of any proceeding under this Act may be heard, if the Court thinks fit, with closed doors. Power to close doors.

54. The Court may from time to time adjourn the hearing of any petition under this Act, and may require further evidence thereon if it sees fit so to do. Power to adjourn.

Enforcement of and appeals from orders and decrees.

55. All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced and may be appealed from, in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from, under the laws, rules and orders for the time being in force :

Provided that there shall be no appeal from a decree of a District Judge for dissolution of marriage or of nullity of marriage : nor from the order of the High Court confirming or refusing to confirm such decree :

No appeal as to costs.

Provided also that there shall be no appeal on the subject of costs only.

Appeal to Queen in Council.

56. Any person may appeal to Her Majesty in Council from any decree (other than a decree *nisi*) or order under this Act of a High Court made on appeal or otherwise,

and from any decree (other than a decree *nisi*) or order made in the exercise of original jurisdiction by Judges of a High Court or of any Division Court from which an appeal shall not lie to the High Court,

when the High Court declares that the case is a fit one for appeal to Her Majesty in Council.

*XIII.—Remarriage.*

Liberty to parties to marry again.

57. When six months after the date of an order of a High Court confirming the decree for a dissolution of marriage made by a District Judge have expired,

or when six months after the date of any decree of a High Court dissolving a marriage have expired, and no appeal has been presented against such decree to the High Court in its appellate jurisdiction,

or when any such appeal has been dismissed,

or when in the result of any such appeal any marriage is declared to be dissolved,

but not sooner, it shall be lawful for the respective parties to the marriage to marry again, as if the prior marriage had been dissolved by death :

Provided that no appeal to Her Majesty in Council has been presented against any such order or decree.

When such appeal has been dismissed, or when in the result thereof the marriage is declared to be dissolved, but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death.

English clergyman not compelled to solemnize marriages of

58. No clergyman in Holy Orders of the Church of England shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or shall be liable to

any suit, penalty or censure for solemnizing or refusing to solemnize the marriage of any such person.

persons divorced for adultery.

59. When any minister of any church or chapel of the said church refuses to perform such marriage-service between any persons who but for such refusal would be entitled to have the same service performed in such church or chapel, such minister shall permit any other minister in Holy Orders of the said church, entitled to officiate within the diocese in which such church or chapel is situate, to perform such marriage-service in such church or chapel.

English minister refusing to perform ceremony to permit use of his church.

## *XIV.—Miscellaneous.*

60. Every decree for judicial separation or order to protect property, obtained by a wife under this Act shall, until reversed or discharged, be deemed valid, so far as necessary, for the protection of any person dealing with the wife.

Decree for separation or protection-order valid as to persons dealing with wife before reversal.

No reversal, discharge or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of such decree or order, and of the reversal, discharge or variation thereof.

All persons who in reliance on any such decree or order make any payment to, or permit any transfer or act to be made or done by, the wife who has obtained the same shall, notwithstanding such decree or order may then have been reversed, discharged or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the decree or order been discontinued, be protected and indemnified as if, at the time of such payment, transfer or other act, such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued,

Indemnity of persons making payment to wife without notice of reversal of decree or protection-order.

unless, at the time of the payment, transfer or other act, such persons had notice of the reversal, discharge or variation of the decree or order or of the cessation or discontinuance of the separation.

61. After this Act comes into operation, no person competent to present a petition under sections two and ten shall maintain a suit for criminal conversation with his wife.

Bar of suit for criminal conversation.

62. The High Court shall make such rules under this Act as it may from time to time consider expedient, and may from time to time alter and add to the same:

Power to make rules.

Provided that such rules, alterations and additions are consistent with the provisions of this Act and the Code of Civil Procedure.

All such rules, alterations and additions shall be published in the local official Gazette.

## SCHEDULE OF FORMS.

*No.* 1.—PETITION *by husband for a dissolution of marriage with damages against co-respondent, by reason of adultery.*

(*See sections* 10 *and* 34).

In the (High) Court of
To the Hon'ble Mr. Justice [*or* To the Judge of ]
The day of 186 .
The petition of *A. B.* of

SHEWETH,

1. That your petitioner was on the day of , one thousand eight hundred and , lawfully married to *C. B.*, then *C. D.*, spinster at .[a]

2. That from his said marriage, your petitioner lived and cohabited with his said wife at and at , in , and lastly at , in , and that your petitioner and his said wife have had issue of their said marriage, *five* children, of whom *two* sons only survive, aged respectively *twelve* and *fourteen* years.

3. That during the *three* years immediately preceding the day of one thousand eight hundred and , *X. Y.* was constantly, with few exceptions, residing in the house of your petitioner at aforesaid, and that on divers occasions during the said period, the dates of which are unknown to your petitioner, the said *C. B.* in your petitioner's said house committed adultery with the said *X. Y.*

4. That no collusion or connivance exists between me and my said wife for the purpose of obtaining a dissolution of our said marriage or for any other purpose.

Your petitioner, therefore, prays that this (Hon'ble) Court will decree a dissolution of the said marriage, and that the said *X. Y.* do pay the sum of rupees 5,000 as damages by reason of his having committed adultery with your petitioner's said wife, such damages to be paid to your petitioner, or otherwise paid or applied as to this (Hon'ble) Court seems fit.

(Signed) *A. B.*[b]

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(a) If the marriage was solemnized out of India, the adultery must be shewn to have been committed in India.

(b) The petition must be signed by the petitioner

*Form of Verification.*

I, *A. B.*, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

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*No. 2.—Respondent's statement in answer to No. 1.*

In the Court of the day of

Between *A. B.*, petitioner,
*C. B.*, respondent and
*X. Y.*, co-respondent.

*C. B.*, the respondent, by *D. E.*, her attorney [*or* vakíl], in answer to the petition of *A. B.*, says that she denies that she has on divers or any occasions committed adultery with *X. Y.*, as alleged in the third paragraph of the said petition.

Wherefore the respondent prays that this (Hon'ble) Court will reject the said petition.

(Signed) *C. B.*

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*No. 3.—Co-respondent's statement in answer to No. 1.*

In the (High) Court of

The day of

Between *A. B.*, petitioner,
*C. B.*, respondent, and
*X. Y.*, co-respondent.

*X. Y.*, the co-respondent, in answer to the petition filed in this cause, saith that he denies that he committed adultery with the said *C. B.* as alleged in the said petition.

Wherefore the said *X. Y.* prays that this (Hon'ble) Court will reject the prayer of the said petitioner and order him to pay the costs of and incident to the said petition.

(Signed) *X. Y.*

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*No. 4.*—PETITION *for Decree of Nullity of Marriage.*
(*See section* 18).

In the (High) Court of

To the Hon'ble Mr. Justice [*or* To the Judge of ]

The day of , 186 .

The petition of *A. B.* falsely called *A. D.*,

SHEWETH,

1. That on the day of , one thousand eight hundred and , your petitioner, then a spinster, eighteen years of age, was married

in fact, though not in law, to *C. D.*, then a bachelor of about thirty years of age, at [*some place in India*].

2. That from the said day of , one thousand eight hundred and , until the month of , one thousand eight hundred and , your petitioner lived and cohabited with the said *C. D.*, at divers places, and particularly at aforesaid.

3. That the said *C. D.* has never consummated the said pretended marriage by carnal copulation.

4. That at the time of the celebration of your petitioner's said pretended marriage, the said *C. D.* was, by reason of his impotency or malformation, legally incompetent to enter into the contract of marriage.

5. That there is no collusion or connivance between her and the said *C. D.* with respect to the subject of this suit.

Your petitioner therefore prays that this (Hon'ble) Court will declare that the said marriage is null and void

(Signed) *A. B.*

*Form of Verification: see No.* 1.

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*No* 5.—PETITION *by wife for judicial separation on the ground of her husband's adultery.*

*(See section* 22*).*

In the (High) Court of

To the Hon'ble Mr. Justice [*or* To the Judge of ].

The day of 186 ,

The petition of *C. B.*, of , the wife of *A. B.*

SHEWETH,

1. That on the day of , one thousand eight hundred and *sixty* , your petitioner, then *C. D.*, was lawfully married to *A. B.* at the Church of , in the

2. That after her said marriage, your petitioner cohabited with the said *A. B.* at and at , and that your petitioner and her said husband have issue living of their said marriage, *three* children, to wit, *&c.*, *&c.*(*a*).

3. That on divers occasions in or about the months of *August*, *September* and *October*, one thousand eight hundred and *sixty* , the said *A. B.*, at , aforesaid, committed adultery with *E. F.*, who was then

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(a) State the respective ages of the children.

living in the service of the said *A. B.* and your petitioner at their said residence aforesaid.

4. That on divers occasions in the months of *October, November* and *December,* one thousand eight hundred and *sixty* , the said *A. B.* at aforesaid, committed adultery with *G. H.,* who was then living in the service of the said *A. B.* and your petitioner at their said residence aforesaid.

5. That no collusion or connivance exists between your petitioner and the said *A. B.* with respect to the subject of the present suit.

Your petitioner therefore prays that this (Hon'ble) Court will decree a judicial separation to your petitioner from her said husband by reason of his aforesaid adultery.

(Signed) *C. B.*(*a*)

*Form of Verification : see No.* 1.

*No.* 6.—*Statement in answer to No.* 5.

In the (High) Court of

*B.* against *B.*

The day of

The respondent, *A. B.*, by *W. Y.*, his attorney [*or* vakíl] saith,—

1. That he denies that he committed adultery with *E. F.*, as in the third paragraph of the petition alleged.

2. That the petitioner condoned the said adultery with *E. F.*, if any.

3. That he denies that he committed adultery with *G. H.*, as in the fourth paragraph of the petition alleged.

4. That the petitioner condoned the said adultery with *G. H.*, if any.

Wherefore this respondent prays that this (Hon'ble) Court will reject the prayer of the said petition.

(Signed) *A. B.*

*No.* 7.—*Statement in reply to No.* 6.

In the (High) Court of

*B.* against *B.*

The day of

The petitioner, *C. B.*, by her attorney [*or* vakíl], says—

1. That she denies that she condoned the said adultery of the respondent with *E. F.*, as in the second paragraph of the statement in answer alleged.

(*a*) The petition must be signed by the petitioner.

2. That even if she had condoned the said adultery, the same has been revived by the subsequent adultery of the respondent with *G. H.*, as set forth in the fourth paragraph of the petition.

(Signed) *C. B.*

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*No.* 8.—PETITION *for a judicial separation by reason of cruelty.*

[*See section* 22].

In the (High) Court of
To the Hon'ble Mr. Justice [*or* To the Judge of ]
The day of 186 .

The petition of *A. B.* (wife of *C. B.*) of

SHEWETH,

1. That on the day of , one thousand eight hundred and , your petitioner, then *A. D.*, spinster, was lawfully married to *C. B.*, at

2. That from her said marriage, your petitioner lived and cohabited with her said husband at until the day of , one thousand eight hundred and , when your petitioner separated from her said husband as hereinafter more particularly mentioned, and that your petitioner and her said husband have had no issue of their said marriage.

3. That from and shortly after your petitioner's said marriage, the said *C. B.* habitually conducted himself towards your petitioner with great harshness and cruelty, frequently abusing her in the coarsest and most insulting language, and beating her with his fists, with a cane, or with some other weapon.

4. That on an evening in or about the month of , one thousand eight hundred and , the said *C. B.*, in the highway and opposite to the house in which your petitioner and the said *C. B.* were then residing at aforesaid, endeavoured to knock your petitioner down, and was only prevented from so doing by the interference of *F. D.*, your petitioner's brother.

5. That subsequently on the same evening, the said *C. B.* in his said house at aforesaid, struck your petitioner with his clenched fist a violent blow on her face.

6. That on one Friday night in the month of , one thousand eight hundred and , the said *C. B.*, in , without provocation, threw a knife at your petitioner, thereby inflicting a severe wound on her right hand.

7. That on the afternoon of the day of , one thousand eight hundred and , your petitioner, by reason of the great and continued cruelty practised towards her by her said husband, with assistance withdrew from the house of her said husband to the house of her father at : that from and after the said day of , one thousand eight hundred and , your petitioner hath lived separate and apart from her said husband, and hath never returned to his house or to cohabitation with him.

8. That there is no collusion or connivance between your petitioner and her said husband with respect to the subject of the present suit.

Your petitioner, therefore, prays that this (Hon'ble) Court will decree a judicial separation between your petitioner and the said *C. B.*, and also order that the said *C. B.* do pay the costs of and incident to these proceedings.

(Signed) *A. B.*

*Form of Verification : see No* 1.

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*No.* 9.—*Statement in answer to No.* 8.

In the (High) Court of

The day of

Between *A. B.*, petitioner, and

*C. B.*, respondent.

*C. B.*, the respondent, in answer to the petition filed in this cause, by *W. J.*, his attorney [*or* vakíl], saith that he denies that he has been guilty of cruelty towards the said *A. B.*, as alleged in the said petition.

(Signed) *C. B.*

---

No. 10.—PETITION *for reversal of decree of separation.*

(*See section* 24).

In the (High) Court of

To the Hon'ble Mr. Justice [*or* To the Judge of ]

The day of 186 .

The petition of *A. B.*, of

SHEWETH,

1. That your petitioner was on the day of lawfully married to

2. That on the day of , this (Hon'ble) Court at the petition of , pronounced a decree affecting the petitioner to the effect following, to wit,—

[*Here set out the decree*].

3. That such decree was obtained in the absence of your petitioner, who was then residing at

[*State facts tending to show that the petitioner did not know of the proceedings; and, further, that had he known he might have offered a sufficient defence*].

*or*

That there was reasonable ground for your petitioner leaving his said wife, for that his said wife

[*Here state any legal grounds justifying the petitioner's separation from his wife*].

Your petitioner, therefore, prays that this (Hon'ble) Court will reverse the said decree.

(Signed) *A. B.*

*Form of Verification: see No.* 1.

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*No.* 11.—PETITION *for Protection-order.*

*(See section 27).*

In the (High) Court of .

To the Hon'ble Mr. Justice [*or* To the Judge of ]

The day of 186 .

The petition of *C. B.*, of ,

the wife of *A. B.*

SHEWETH,

That on the day of she was lawfully married to *A. B.*, at

That she lived and cohabited with the said *A. B.* for years at , and also at , and hath had children, issue of her said marriage, of whom are now living with the applicant, and wholly dependent upon her earnings.

That on or about , the said *A. B.*, without any reasonable cause, deserted the applicant, and hath ever since remained separate and apart from her.

That since the desertion of her said husband, the applicant hath maintained herself by her own industry [*or* on her own property, *as the case may be*], and hath thereby and otherwise acquired certain property consisting of [*here state generally the nature of the property*].

Wherefore she prays an order for the protection of her earnings and property acquired since the said day of , from the said *A. B.*, and from all creditors and persons claiming under him.

(Signed) *C. B.*

---

*No.* 12.—PETITION *for alimony pending the suit.*

*(See section* 36*).*

In the (High) Court of

*B.* against *B.*

To the Hon'ble Mr. Justice [*or* To the Judge of ]

The day of 186 .

The petition of *C. B.*, the lawful wife of *A. B.*

SHEWETH,

1. That the said *A. B.* has for some years carried on the business of , at , and from such business derives the nett annual income of from Rs. 4,000 to 5,000.

2. That the said *A. B.* is possessed of plate, furniture, linen and other effects at his said house aforesaid, all of which he acquired in right of your petitioner as his wife, or purchased with money he acquired through her, of the value of Rs. 10,000.

3. That the said *A. B.* is entitled, under the will of his father, subject to the life interest of his mother therein, to property of the value of Rs. 5,000 or some other considerable amount (*a*).

Your petitioner, therefore, prays that this (Hon'ble) Court will decree such sum or sums of money by way of alimony, pending the suit, as to this (Hon'ble) Court may seem meet.

(Signed) *C. B.*

*Form of Verification : see No.* 1.

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(*a*) The petitioner should state her husband's income as accurately as possible.

*No.* 13.—*Statement in answer to No.* 12.

In the (High) Court of

*B.* against *B.*

*A. B.*, of , the above-named respondent, in answer to the petition for alimony, pending the suit, of *C. B.*, says—

1. In answer to the first paragraph of the said petition, I say that I have for the last *three* years carried on the business of , at , and that, from such business, I have derived a nett annual income of Rs. 900, but less than Rs. 1,000.

2. In answer to the second paragraph of the said petition, I say that I am possessed of plate, furniture, linen and other chattels and effects at my said house aforesaid, of the value of Rs. 7,000, but as I verily believe of no larger value. And I say that a portion of the said plate, furniture and other chattels and effects of the value of Rs. 1,500, belonged to my said wife before our marriage, but the remaining portions thereof I have since purchased with my own monies. And I say that, save as hereinbefore set forth, I am not possessed of the plate and other effects as alleged in the said paragraph in the said petition, and that I did not acquire the same as in the said petition also mentioned.

3. I admit that I am entitled under the will of my father, subject to the life-interest of my mother therein, to property of the value of Rs. 5,000, that is to say, I shall be entitled under my said father's will, upon the death of my mother, to a legacy of Rs. 7,000, out of which I shall have to pay to my father's executors the sum of Rs. 2,000, the amount of a debt owing by me to his estate, and upon which debt I am now paying interest at the rate of five per cent. per annum.

4. And, in further answer to the said petition, I say that I have no income whatever except that derived from my aforesaid business, that such income, since my said wife left me, which she did on the day of last, has been considerably diminished, and that such diminution is likely to continue. And I say that out of my said income, I have to pay the annual sum of Rs. 100 for such interest as aforesaid to my late father's executors, and also to support myself and my two eldest children.

5. And, in further answer to the said petition, I say that, when my wife left my dwelling-house on the day of last, she took with her, and has ever since withheld and still withholds from me, plate,

watches and other effects in the second paragraph of this my answer mentioned, of the value of, as I verily believe, Rs. 800 at the least; and I also say that, within five days of her departure from my house as aforesaid, my said wife received bills due to me from certain lodgers of mine, amounting in the aggregate to Rs. , and that she has ever since withheld and still withholds from me the same sum.

(Signed) *A. B.*

---

*No.* 14.—UNDERTAKING *by minor's next friend to be answerable for respondent's costs.*

*(See section* 49*).*

In the (High) Court of

I, the undersigned *A. B.*, of , being the next friend of *C. D.*, who is a minor, and who is desirous of filing a petition in this Court, under the Indian Divorce Act, against *D. D.* of , hereby undertake to be responsible for the costs of the said *D. D.* in such suit, and that, if the said *C. D.* fail to pay to the said *D. D.* when and in such manner as the Court shall order all such costs of such suit as the Court shall direct him [*or* her] to pay to the said *D. D.*, I will forthwith pay the same to the proper officer of this Court.

Dated this day of 186 .

(Signed) *A. B.*

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# THE INDIAN ARTICLES OF WAR.

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TABLE OF CONTENTS.

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Preamble.

PART I—PRELIMINARY.

*(a)*.—Short title.
*(b)*.—Commencement of Act.
*(c)*.—References to repealed Acts.
*(d)*.—Application of Articles.
*(e)*.—Interpretation-clause.
*(f)*.—Saving of certain regulations.

## PART II.—THE ARTICLES OF WAR.

### TITLE I.—ENLISTMENT, DISMISSAL AND DISCHARGE.

#### CHAPTER I.—*Enlistment.*

*Article* 1.—Articles to be read to recruits.
Affirmation.
*Article* 2.—Attestation.

#### CHAPTER II.—*Dismissal and Discharge.*

*Article* 3.—Dismissal of commissioned officers.
*Article* 4.—Dismissal of other persons.
*Article* 5.—Attested person dismissed re-enlisting.
*Article* 6.—Certificate to person dismissed.

### TITLE II.—MILITARY OFFENCES.

#### CHAPTER I.—*Crimes punishable with Death or Transportation.*

*Article* 7.—Mutiny and sedition.
*Article* 8.—Violence to superior.
*Article* 9.—Disobedience.
*Article* 10.—Desertion.
*Article* 11.—Re-enlistment without having been discharged.
*Article* 12.—Sentry sleeping on or quitting post in time of war.
*Article* 13.—Sentry plundering.
*Article* 14.—Abandoning garrison.
*Article* 15.—Betraying watchword.
*Article* 16.—Corresponding with enemy.
*Article* 17.—Assisting enemy.
*Article* 18.—Releasing prisoners.
*Article* 19.—Misbehaviour in presence of enemy.
*Article* 20.—Seeking plunder during action.
*Article* 21.—Quitting guard in time of war.
*Article* 22.— Assaulting persons bringing provisions.
*Article* 23.—Causing alarm in time of war.
*Article* 24.—Punishment for the foregoing offences.

CHAPTER II.—*Crimes punishable otherwise than by Death or Transportation.*

*Article* 25.—Unbecoming behaviour.
*Article* 26.—Intoxication on duty.
*Article* 27.—Striking sentry.
*Article* 28.—Harbouring deserter.
*Article* 29.—Enlisting deserter.
*Article* 30.—Absence without leave.
*Article* 31.—Failure to rejoin.
*Article* 32.—Failure to attend parade.
*Article* 33.—Quitting parade or division.
*Article* 34.—Quitting guard in time of peace.
*Article* 35.—Refusing to receive or releasing prisoners.
*Article* 36.—Leaving arrest.
*Article* 37.—Insubordination.
*Article* 38.—Refusal to superintend military works.
*Article* 39.—Impeding provost-marshal.
*Article* 40.—Striking subordinates.
*Article* 41.—Extortion.
*Article* 42.—House-breaking or plundering in time of peace.
*Article* 43.—Neglecting to compensate person injured by subordinate.
*Article* 44.—Defiling places of worship.
*Article* 45.—Taking bribes.
*Article* 46.—Causing false alarm in time of peace.
*Article* 47.—Making away with régimental necessaries.
*Article* 48.—Attempting suicide.
*Article* 49.—Appearing armed in camp.
*Article* 50.—Sentry sleeping on post in time of peace.
*Article* 51.—Absence from camp.
*Article* 52.—Absence from cantonment after tattoo.
*Article* 53.—Punishment for offences mentioned in Articles 25 to 52.

CHAPTER III.—*Crimes to be punished with Dismissal from the Service.*

*Article* 54.—Embezzlement.
*Article* 55.—Destruction of Government property.
*Article* 56.—Giving false evidence.
*Article* 57.—Punishment for offences mentioned in Articles 54, 55, 56.

CHAPTER IV.—*Disgraceful Conduct.*

*Article* 58.—Malingering.
*Article* 59.—Wilfully causing hurt.

*Article* 60.—Theft.
*Article* 61.—Embezzlement of Government property not entrusted on public account.
*Article* 62.—Obtaining pension by false statement.
*Article* 63.—Furnishing false returns.
*Article* 64.—Other fraudulent offences.
*Article* 65.—Cruelty or indecency.
*Article* 66.—Penalties for offences specified in Articles 58 to 65.

CHAPTER V.—*Offences against Courts-martial.*

*Article* 67.—Refusal to attend or be sworn.
*Article* 68.—Contempts.
*Article* 69.—Punishment for offences specified in Articles 67 and 68.

CHAPTER VI.—*Unspecified Offences.*

*Article* 70.—Unspecified offences.
*Article* 71.—Abetment.

---

TITLE III.—JURISDICTION.

---

CHAPTER I.—*Courts-martial.*

*Article* 72.—Kinds of Courts-martial.

(1).—*General Court-martial.*

*Article* 73.—Appointment of General Court-martial.
*Article* 74.—Composition of such Court.
*Article* 75.—Composition of such Court appointed under orders in Council.
*Article* 76.—Powers of such Court.

(2).—*Detachment General Court-martial.*

*Article* 77.—Appointment of such Court-martial.
*Article* 78.—Its composition and powers.

(3).—*District Court-martial and*

(4).—*Garrison Court-martial.*

*Article* 79.—Appointment of such Courts.
*Article* 80.—Composition of such Courts.
*Article* 81.—Officers composing such Courts.
*Article* 82.—Powers of such Courts.

(5).—*Regimental Court-martial.*

*Article* 83.—Appointment of such Court.
*Article* 84.—Composition of such Court.
*Article* 85.—Powers of such Court.

(6).—*Regimental Detachment Court-martial and*

(7).—*Detachment Court-martial.*

*Article* 86.—Appointment of Regimental Detachment Court-martial.
*Article* 87.—Appointment of Detachment Court-martial.
*Article* 88.—Composition of such Courts.
*Article* 89.—Powers of such Courts.

(8).—*Summary Courts-martial.*

*Article* 90.—Summary Courts-martial.
*Article* 91.—Constitution of such Courts.
*Article* 92.—Persons triable by such Court.
*Article* 93.—Offences triable by such Court.
*Article* 94.—Its powers.
*Article* 95.—Trial of grave offences by inferior Courts.
*Article* 96.—Courts composed of European officers.
*Article* 97.—Claim to be tried by European officers.

CHAPTER II.—*Procedure.*

*Article* 98.—Limitation of trials.
*Article* 99.—Place of trial.
*Article* 100.—Arrest or confinement of accused.
*Article* 101.—Judge Advocate.
*Article* 102.—Interpreter.
*Article* 103.—President.
*Article* 104.—Conduct of proceedings.
*Article* 105.—Precedence of Native officers.
*Article* 106.—Time of trial, adjournment and re-assembly.
*Article* 107.—Challenges.
*Article* 108.—Interpreter's oath.
*Article* 109.—Oaths of president and members.
*Article* 110.—Judge Advocate's oath.
*Article* 111.—Oaths of witnesses.
*Article* 112.—Oaths to be binding on conscience.
*Article* 113.—Reswearing in case of several trials.

*Article* 114.—Presumptive evidence of desertion.
*Article* 115.—Reference by prisoner to Government officer.
*Article* 116.—Trial for desertion.
*Article* 117.—Evidence of previous convictions and general character.
*Article* 118.—Voting of members.
*Article* 119.—Majority requisite to sentence of death.
*Article* 120.—Revision of finding or sentence.
*Article* 121.—Procedure to be generally followed.
*Article* 122.—Summoning witnesses.
*Article* 123.—Contempts of Court.
*Article* 124.—Privilege of witnesses.

*Summary Courts-martial.*

*Article* 125.—Persons to attend summary Court-martial.
*Article* 126.—Proceedings of such Courts.
*Article* 127.—Oaths of interpreter and officer holding trial.
*Article* 128.—Evidence.
*Article* 129.—Signature and transmission of proceedings.

CHAPTER III.—*Sentences.*

*Article* 130.—Of General Courts-martial.
*Article* 131.—Of General, District or Garrison Courts-martial.
*Article* 132.—Reduction, dismissal, corporal punishment and imprisonment.
*Article* 133.—Limit of imprisonment.
*Article* 134.—Solitary confinement.
*Article* 135.—Reduction to ranks.
*Article* 136.—Forfeiture of pay and pension.
*Article* 137.—Forfeiture of arrears of pay.
*Article* 138.—Stoppages.
*Article* 139.—Extent of stoppages.
*Article* 140.—Sentence of transportation or imprisonment on person already sentenced.
*Article* 141.—Form of sentence of death.

CHAPTER IV.—*Confirmation and Commutation of Sentences.*

*Article* 142.—Sentences to be confirmed or otherwise disposed of.
*Article* 143.—Sentence of death.
*Article* 144.—Sentence of penal servitude or transportation.
*Article* 145.—Sentence of dismissal on commissioned officers, &c.
*Article* 146.—Any sentence on commissioned officers, &c.

*Article* 147.—Sentence of corporal punishment.
*Article* 148.—Sentence of imprisonment with hard labour.
*Article* 149.—Sentence of reduction with corporal punishment or imprisonment. Commutation of sentence of dismissal on non-commissioned officers.

CHAPTER V.—*Execution of Sentences.*

*Article* 150.—Transportation.
*Article* 151.—Imprisonment with hard labour.
*Article* 152.—Place of imprisonment.
*Article* 153.—Transfer to military custody.
*Article* 154.—Forfeiture of pay during imprisonment.
*Article* 155.—Striking convict off strength of regiment.
*Article* 156.—Non-re-admission of convict.
*Article* 157.—Dismissal with ignominy.
*Article* 158.—Publication of sentence for disgraceful conduct.
*Article* 159.—Sentences of summary Courts-martial.

CHAPTER VI.—*Pardons and Remissions.*

*Article* 160.—Pardon of person convicted of military offence.
*Article* 161.—Release of prisoners.

CHAPTER VII.—*Regimental Courts of Enquiry.*

*Article* 162.—Regimental Courts of enquiry.
*Article* 163.—Persons absent as prisoners of war.

---

TITLE IV.—POWERS OF OFFICERS INDEPENDENTLY OF TRIAL.

*Article* 164.—Reduction to ranks.
*Article* 165.—Minor punishments.
*Article* 166.—Offences of Native followers.
*Article* 167.—Complaints against officers.
*Article* 168.—Provost-marshals.
*Article* 169.—Their duties and powers.

TITLE V.—NON-MILITARY OFFENCES.

*Article* 170.—Offences committed within jurisdiction of criminal Court in British India.
*Article* 171.—Offences committed out of British India.
*Article* 172.—General Court-martial for trial of such offences.
*Article* 173.—Sentences of such Court.

*Article* 174.—Confirmation of sentences.
*Article* 175.—Commutation of sentences and provision as to prisoners.

---

TITLE VI.—EFFECTS OF DECEASED MEN AND DESERTERS.

*Article* 176.—Effects of deceased men and of deserters.
*Article* 177.—Sale of effects and discharge of debts.
*Article* 178.—Remittal of surplus to general treasury.
*Article* 179.—Sale of effects of deserters.
Remittal of proceeds.

---

## PART III.—MISCELLANEOUS.

(*a*).—Prohibition of second trial.
(*b*).—Prohibition of arrest for debt.
(*c*).—Breach of cantonment rules.
(*d*).—Capture of deserters.
(*e*).—Apprehension of military offenders.
(*f*).—Presumption as to signatures.
(*g*).—Native troops serving out of their own presidency.
(*h*).—Power to make orders and issue warrants.
(*i*).—Limitation of certain powers.
(*j*).—Power to make rules.
(*k*).—Articles to be read periodically.

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## ACT No. V OF 1869.

*Received the Governor General's assent on the 26th February* 1869.

# An Act to consolidate and amend the Articles of War for the government of Her Majesty's Native Indian Forces.

*Preamble.*

WHEREAS it is expedient to consolidate and amend the Articles of War for the government of the Native officers, soldiers and other persons in Her Majesty's Indian Army ; It is hereby enacted as follows :—

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PART I.—PRELIMINARY.

(*a*).—*Short Title.*

This Act may be called " The Indian Articles of War."

(*b*).—*Commencement of Act.*

This Act shall come into operation on the first day of June 1869.

(*c*).—*Repeal of Enactments* [ Repealed by Act No: XIV of 1870.]

References to any Act hereby repealed[a] or [b] any Act passed subsequently thereto shall be read as if made to this Act.

(*d*).—*Application of Articles.*

The Articles contained in Part II of this Act shall apply to all

Commissioned Officers,
Sub-Assistant Surgeons,
Hospital Assistants,
Native Doctors,
Warrant Officers,
Non-Commissioned Officers,
Hospital Attendants of any class,
Trumpeters, Buglers, Drummers,
Musicians,
Soldiers,
Unattested Recruits,
Lascars, Mahouts, Drivers,
Farriers, Syces, Grass-cutters,
Artificers, Labourers,
Sutlers, Followers, whether public or private, and all other persons attached to or serving with any portion of the said Army :

*Proviso.*

Provided that nothing in the said Part (other than Article 123) shall render any British-born subject of Her Majesty, or any legitimate Christian lineal descendant of such subject, whether in the paternal or maternal line, triable or punishable under the said Part, but all such persons belonging to Her Majesty's Indian Army shall be triable and punishable as if they belonged to Her Majesty's British Forces.

And that nothing in the said Part shall render any American or any Christian European not being British-born, or any Christian legitimate lineal descendant of such American or European, whether in the paternal or maternal line, triable by a Court-martial composed of Native commissioned officers ; but

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[a] Acts XXIX of 1861, V of 1863, XXVI of 1865, and XXV of 1857, s. 1.
[b] *Sic.* Read 'in.'

all such persons belonging to Her Majesty's Indian Army shall be triable by Courts-martial composed of European officers only. Save as aforesaid, such persons shall be subject to this Act as if they were Natives of British India.

*(e).—Interpretation-clause.*

In this Act, unless there be something repugnant in the subject or context—

"Army" means Her Majesty's Indian Army, and "service" means service in such Army :

"Commissioned Officer" includes all officers holding commissions in the Native ranks of the Army, whether they be of purely Native or of a mixed European and Native extraction :

"European Officers" includes all European officers holding commissions in such army or in Her Majesty's British army :

"Commanding Officer" or "Officer Commanding" means the European officer in actual command for the time being of any force, division, district, regiment, corps, detachment, or depôt, as the case may be :

"Judge Advocate" includes any European officer duly authorized to officiate as Judge Advocate :

"Court-martial" means a Court-martial held under this Act, and in Articles 67, 68, 69 and 123 shall include a Court-martial held under the Act for punishing mutiny and desertion, and for the better payment of the army and their quarters for the time being in force :

"Soldier" and "Soldiers" include non-commissioned officers and all armed persons doing duty in the ranks of the army :

"Attested" means attested under the Articles contained in Part II of this Act :

"Deserter" means a person subject to such Articles, who has deserted from the army :

"Government" means, in the case of the Madras Army, the Governor of Fort Saint George in Council; in the case of the Bombay Army, the Governor of Bombay in Council, and in the case of any other part of Her Majesty's Indian Army, the Governor General of India in Council ;

And the expressions "assault," "criminal force," "dishonestly," "extortion," "fraudulently," "grievous hurt," "hurt," "theft," "voluntarily causes hurt," "voluntarily causes grievous hurt," "reason to believe," "wrongful gain" and "wrongful loss" shall be severally taken to have the meanings assigned to them respectively in the Indian Penal Code, and quoted in Part I of the appendix to this Act.

(*f*).—*Saving of certain Regulations.*

Nothing in this Act affects any regulations by which the respective offices and powers of Cantonment Magistrates, Commissariat officers, officers in charge of the Police in cantonments, and Superintendents of military bázárs are defined and controlled, or by which panchâyats are constituted and guided.

## PART II.—THE ARTICLES OF WAR.

### TITLE I.—ENLISTMENT, DISMISSAL AND DISCHARGE.

### CHAPTER I.—ENLISTMENT.

*Articles to be read to Recruits.*

*Article* 1.—Every person prior to being enrolled in any regiment or corps shall have the 7th, 8th, 9th, 10th, 11th, 24th, 38th and 53rd of these Articles read and explained to him.

*Affirmation.*

When reported fit for duty, such declaration or charge as may be usual shall be made to him, by the officer commanding, in front of the regiment or corps, or of such portion thereof as shall be present; and the person shall then make the following affirmation :—

"I , inhabitant of , son of , solemnly "affirm in the presence of Almighty God that I will be faithful to Her Majes- "ty the Queen, Her heirs and successors, and will go wherever I am ordered, "by land or sea, and will obey all commands of the officers set over me, even "to the peril of my life.

*Attestation.*

*Article* 2.—All persons of the following classes, hereafter enlisted or enrolled under these Articles, shall be attested according to the regulations of the Government to which they are respectively subject :—Sub-assistant Surgeons, Hospital-assistants, Native Doctors, Warrant-officers of any department, Trumpeters, Buglers, Drummers, Musicians, Soldiers, Lascars, Mahouts, Drivers, Farriers, Syces and Grass-cutters.[a]

Articles 3, 4, 5, 7 to 71 (both inclusive), 90 to 94 (both inclusive), 130 to 139 (both inclusive), 154, 167 and 176 shall be read to every person enlisted or enrolled under these Articles at the time of his attestation.

[a] See Act No. V of 1875, as to the rights and liabilities of certain Native soldiers who have been enrolled without having been attested. See, also, Military Department Notification, No. 200, dated 4th March 1874, *Gazette of India*, 7th March 1874, p. 136.

## CHAPTER II.—DISMISSAL AND DISCHARGE.

*Dismissal of commissioned officers.*

*Article* 3.—A commissioned officer shall be liable to dismissal from the service by the sentence of a General Court-martial, or by order of the Governor General of India in Council, or of the Commander-in-Chief of the presidency to which he belongs, or, if the officer belongs to either of the presidencies of Fort St. George or Bombay, of the Governor in Council of such presidency.

Every commissioned officer dismissed under these Articles shall forfeit all claim to pension.

*Dismissal of other persons.*

*Article* 4.—Any person subject to these Articles, other than a commissioned officer, shall be liable to dismissal from the service

by the sentence of any Court-martial empowered to try him,

or by order of the Governor General of India in Council, or of the Commander-in-Chief of the presidency to which he belongs,

or, if he belongs to either of the presidencies of Fort St. George and Bombay, by order of the Governor in Council,

or, if he belongs to a Force not attached to any such presidency, by order of the officer commanding such Force.

Every such person so dismissed shall forfeit all claim to pension.

*Attested person dismissed and re-enlisting.*

*Article* 5.—Every attested person of or below the rank of non-commissioned officer who has been dismissed or discharged from the service, and who subsequently re-enters the service without at the time stating the fact of his dismissal or discharge, or showing his certificate of dismissal or discharge, may be dismissed the service by the officer commanding the regiment or corps with which he is serving.

*Certificate to person dismissed.*

*Article* 6.—Every attested person who is dismissed or discharged from the service, shall be furnished by his commanding officer with a certificate, in the English language and in the mother-tongue of such person (when his mother-tongue is not English), setting forth

(*a*) the authority dismissing or discharging him;

(*b*) the cause of his dismissal or discharge, and

(*c*) the full period of his service in the army.

## TITLE II.—MILITARY OFFENCES.

### CHAPTER I.—CRIMES PUNISHABLE WITH DEATH OR TRANSPORTATION.

*Mutiny and sedition.*

*Article* 7.—Any person subject to these Articles—

Who begins, excites, causes or joins in any mutiny or sedition in any regiment, corps, detachment or guard;

or who, being present at any mutiny or sedition, does not use his utmost endeavours to suppress the same,

or who, knowing or having reason to believe in the existence of any mutiny, or of any intention to mutiny, or of any conspiracy against the State,

does not, without delay, give information thereof to his commanding or other superior officer;—or

*Violence to superior.*

*Article* 8.—Who uses or attempts to use criminal force to, or commits an assault on, his superior officer, whether on or off duty, under any circumstances in which the superior officer is distinguishable as such in any manner;—or

*Disobedience.*

*Article* 9.—Who disobeys the lawful command of his superior officer;—or

*Desertion.*

*Article* 10.—Who deserts the service;—or

*Re-enlistment without having been discharged.*

*Article* 11.—Who, without having first obtained a regular discharge from the regiment or corps to which he belongs, enlists, or enrols himself in any other regiment or corps;—or

*Sentry sleeping on or quitting post in time of war.*

*Article* 12.—Who, being a sentry in time of war or alarm, or over any State-prisoner, treasure, magazine or dockyard, sleeps upon his post, or quits it without being regularly relieved, or without leave;—or

*Sentry plundering.*

*Article* 13.—Who, being a sentry, or on guard, plunders or wilfully destroys or injures any property placed under his charge, or under charge of his guard;—or

*Abandoning garrison.*

*Article* 14.—Who shamefully abandons or delivers up any garrison, fortress, post or guard committed to his charge, or which it is his duty to defend ;—or

*Betraying watch-word.*

*Article* 15.—Who treacherously makes known the watch-word to any person not entitled to receive it according to the rules and discipline of war ;—or

*Corresponding with enemy.*

*Article* 16.—Who directly or indirectly holds correspondence with, or communicates intelligence to, the enemy, or any person in arms against the State, or who, coming to the knowledge of any such correspondence or communication, omits to discover it immediately to his commanding or other superior officer ;—or

*Assisting enemy.*

*Article* 17.—Who directly or indirectly assists or relieves with money, victuals or ammunition, or knowingly harbours or protects any enemy, or person in arms against the State ;—or

*Releasing prisoners.*

*Article* 18.—Who, without proper authority, releases any State-prisoner, enemy, or person taken in arms against the State, placed under his charge, or who negligently suffers any such prisoner, enemy or person to escape ;—or

*Misbehaviour in presence of enemy.*

*Article* 19.—Who, in presence of an enemy, or of any persons in arms against whom it is his duty to act, shamefully casts away his arms or ammunition, or intentionally uses words or any other means to induce any officer or soldier to abstain from acting against the enemy or to discourage such officer or soldier from acting against the enemy, or who otherwise misbehaves ;—or

*Seeking plunder during action.*

*Article* 20.—Who, in time of action, without authority, leaves his commanding officer, or his post, or colours, or party to go in search of plunder ;—or

*Quitting guard in time of war.*

*Article* 21.—Who, in time of war, quits his guard, picquet, party or patrol, without being regularly relieved or without leave ;—or

*Assaulting persons bringing provisions.*

*Article* 22.—Who, in time of war, or during any military operation, uses criminal force to, or commits an assault on, any person bringing provisions or other necessaries to the camp or quarters of any of Her Majesty's forces,

or forces a safeguard, or, without authority, breaks into any house or other place for plunder; or plunders, injures or destroys any field, garden or other property of any kind;—or

*Causing false alarm in time of war.*

*Article* 23.—Who in time of war, or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports by words or by letters calculated to create alarm or despondency,

*Punishment for the foregoing offences.*

*Article* 24.—Shall, on conviction, suffer death, or transportation for life or for a term of not less than seven years,

or imprisonment (with or without hard labour, and with or without solitary confinement) for a term which may extend to fourteen years,

or such other punishment as a General Court-martial is, by these Articles, empowered to award.

Whenever any person is convicted under this section of an offence punishable with death, all his property, moveable and immoveable, shall be forfeited to Government.

CHAPTER II.—CRIMES PUNISHABLE OTHERWISE THAN BY DEATH OR TRANSPORTATION.

*Unbecoming behaviour.*

*Article* 25.—Any officer, sub-assistant surgeon, hospital-assistant, native doctor, or warrant-officer,

who behaves in a manner unbecoming his position and character;—and

*Intoxication on duty.*

*Article* 26.—Any person subject to these Articles,

who is in a state of intoxication when on or for any duty, or on parade, or on the line of march;—or

*Striking sentry.*

*Article* 27.—Who strikes, or forces or attempts to force any sentry;—or

*Harbouring deserter.*

*Article* 28.—Who knowingly harbours any deserter; or who, knowing, or having reason to believe, that any other person has deserted, or that any desert-

er has been harboured by any other person, does not immediately give notice to his own or some other superior officer, or use his utmost endeavours to cause such deserter to be apprehended;—or

*Enlisting deserter.*

*Article* 29.—Who knowing, or having reason to believe, that a person is a deserter enlists him ;—or

*Absence without leave.*

*Article* 30.—Who absents himself without leave, or, without sufficient cause, overstays leave granted to him ;—or

*Failure to rejoin.*

*Article* 31.—Who, being on leave of absence and having received information from proper authority that his regiment or corps has been ordered on service, fails, without sufficient cause, to rejoin without delay ;—or

*Failure to attend parade.*

*Article* 32.—Who, without sufficient cause, fails to appear at the time fixed at the parade or place appointed for exercise or duty ;—or

*Quitting parade or division.*

*Article* 33.—Who, when on parade, or on the line of march, without sufficient cause, or without leave from his superior officer, quits the parade or line of march ;—or

*Quitting guard in time of peace.*

*Article* 34.—Who, in time of peace, quits his guard, picquet, or patrol, without being regularly relieved, or without leave ;—or

*Refusing to receive or releasing prisoners.*

*Article* 35.—Who, being in command of a guard, picquet, or patrol, refuses to receive any prisoner duly committed to his charge, or without proper authority releases any prisoner, or negligently suffers any prisoner to escape ;—or

*Leaving arrest.*

*Article* 36.—Who, being under arrest, or in confinement, leaves his arrest or confinement before he is set at liberty by proper authority ;—or

*Insubordination.*

*Article* 37.—Who is grossly insubordinate or insolent to his superior officer in the execution of his office ;—or

*Refusal to superintend military work.*

*Article* 38.—Who refuses to superintend or assist in the making of any field-work, or other military work of any description, ordered to be made either in quarters or in the field;—or

*Impeding Provost-marshal.*

*Article* 39.—Who impedes a provost-marshal or an assistant-provost-marshal, or any person lawfully exercising authority, or refuses when called upon to assist such person when requiring aid in the execution of his duty;—or

*Striking subordinates.*

*Article* 40.—Who strikes or otherwise ill-treats any soldier or other person attested under these Articles being his subordinate in rank or position;—or

*Extortion.*

*Article* 41.—Who commits extortion; or, without proper authority, exacts from any person carriage, porterage or provisions;—or

*House-breaking or plundering in time of peace.*

*Article* 42.—Who, in time of peace, commits house-breaking for the purpose of plundering; or plunders, destroys or damages any field, garden or other property;—or

*Neglecting to compensate person injured by subordinate.*

*Article* 43.—Who, being in command at any post, or on the march, and receiving a complaint that any one under his command has beaten, or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person, or to report the case to the proper authority;—or

*Defiling places of worship.*

*Article* 44.—Who, by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person;—or

*Taking bribes.*

*Article* 45.—Who, directly or indirectly, requires, accepts or obtains, or agrees to accept, or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enlistment or enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service;—or

*Causing false alarm in time of peace.*

*Article* 46.—Who, in time of peace, by any means whatever, intentionally occasions a false alarm in camp, garrison or cantonment;—or

*Making away with regimental necessaries.*

*Article* 47.—Who designedly or through neglect kills, injures or loses his horse, or who dishonestly or fraudulently removes, conceals or delivers to any person, or who designedly or through neglect injures or loses his arms, clothes, tools, musical or surgical instruments, equipments, ammunition, accoutrements or regimental necessaries, or any such articles entrusted to him, or belonging to any other person,

or who sells, pawns, destroys or defaces any medal or decoration granted to him by order of Her Majesty, or of the East India Company, or of the Governor General of India in Council for service in the field, or for general good conduct;—or

*Attempting suicide.*

*Article* 48.—Who attempts to commit suicide, and does any act towards the commission of such offence;—and

*Appearing armed in camp.*

*Article* 49.—Any person subject to these Articles below the rank of warrant officer—

Who, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to, or returning from, any town or bázár, carrying a sword, bludgeon or other offensive weapon;—or

*Sentry sleeping on post in time of peace.*

*Article* 50.—Who, being a sentry, in time of peace, sleeps upon his post, or leaves it before being regularly relieved, or without leave;—or

*Absence from camp.*

*Article* 51.—Who, without proper authority, is found two miles or upwards from camp;—or

*Absence from cantonment after tattoo.*

*Article* 52.—Who, without proper authority, is absent from his cantonment or lines after tattoo, or from camp after retreat-beating;

*Punishment for offences mentioned in Articles* 25—52.

*Article* 53.—Shall, on conviction by any Court-martial competent to try him, be sentenced to such punishment, other than death or transportation, as such Court is, by these Articles, empowered to award.

## CHAPTER III.—CRIMES TO BE PUNISHED WITH DISMISSAL FROM THE SERVICE.

### *Embezzlement.*

*Article* 54.—Any person subject to these Articles—

Who dishonestly misappropriates or converts to his own use any money, provisions, forage, arms, clothing, ammunition, tools, instruments, equipments or military stores of any kind, the property of Government, entrusted to his charge on the public account, or for any military purpose,

or who dishonestly uses or disposes of such property in violation of any direction of a proper authority,

or who dishonestly receives or retains any such property, knowing or having reason to believe the same to have been dishonestly misappropriated or converted;—or

### *Destruction of Government property.*

*Article* 55.—Who wilfully destroys or injures any property of Government entrusted to him on the public account, or for any military purpose;—or

### *Giving false evidence.*

*Article* 56.—Who, having been duly sworn or affirmed before any Court-martial, or other military Court competent to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true;—

### *Punishment for offences mentioned in Articles* 54, 55, 56.

*Article* 57.—Shall, if convicted by a General Court-martial, be sentenced to be dismissed the service and to forfeit any arrears of pay and allowances due to him at the time of dismissal; and shall be punishable also with imprisonment (with or without hard labour, and with or without solitary confinement) for a term which may extend to three years: and shall, if convicted by a District or Garrison Court-martial, be liable to any or all of the penalties which such Court may inflict for disgraceful conduct.

## CHAPTER IV.—DISGRACEFUL CONDUCT.

### *Malingering.*

*Article* 58.—Any person subject to these Articles—

Who malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity;—or

*Wilfully causing hurt.*

*Article* 59.—Who, with intent to render himself or any other person unfit for service, voluntarily causes hurt or voluntarily causes grievous hurt to himself or any other person; or—

*Theft.*

*Article* 60.—Who commits theft in respect of any property of Government, or of any officer or soldier, or of any other person in the service, or of any military mess or band, or of any person serving with or attached to the army, or who dishonestly receives or retains any such property, knowing or having reason to believe it to be stolen;—or

*Embezzlement of Government property not entrusted on public account.*

*Article.* 61.—Who dishonestly misappropriates or converts to his own use any property of Government entrusted to him for any purpose not provided for in Articles 54 and 55,

or who dishonestly receives or retains any such property knowing or having reason to believe it to have been dishonestly misappropriated or converted;—or

*Obtaining pension by false statement.*

*Article* 62.—Who obtains or attempts to obtain for himself, or for any other person, any pension, allowance, or other advantage or privilege by a statement which is false, and which he knows or has reason to believe to be false, or does not know to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement;—or

*Furnishing false returns.*

*Article* 63.—Who knowingly furnishes a false return or report of the number or state of any men under his command or charge, or of any money, arms, ammunition, clothing, equipments, stores or other property in his charge, whether belonging to such men, or to Government, or to any person in or attached to the army, or who, through design or culpable neglect, omits or refuses to make or send any return or report of the matters aforesaid;—or

*Other fraudulent offences.*

*Article* 64.—Who does any other thing with intent to defraud, or to cause wrongful gain to one person, or wrongful loss to another person;—or

*Cruelty or Indecency.*

*Article* 65.—Who commits any other offence of a cruel, indecent or unnatural kind, or attempts to commit any such offence and does any act towards its commission—

*Penalties for offences specified in Articles* 58—65.

*Article* 66.—May be tried for disgraceful conduct, and shall, on conviction by a General, District or Garrison Court-martial, be liable to any or all of the penalties awardable by such Court for disgraceful conduct.

CHAPTER V.—OFFENCES AGAINST COURTS-MARTIAL.

*Refusal to attend or be sworn.*

*Article* 67.—Any person subject to these Articles who, when duly summoned to attend as a witness before a Court-martial, intentionally omits to attend, or refuses to be sworn or make affirmation, or to answer any question, or to produce or deliver up any book or document which he may have been duly warned and called upon to produce or deliver up, or prevaricates ;—or

*Contempts.*

*Article* 68.—Who intentionally offers any insult or causes any interruption or disturbance to, or uses any menacing or disrespectful word, sign or gesture, or is insubordinate or violent in the presence of a Court-martial while sitting ;—

*Punishment for offences specified in Articles* 67 *and* 68.

*Article* 69.—Shall, on conviction by the same or by any other Court-martial which is competent to try the offender, be liable to such punishments as the convicting Court is, by these Articles, empowered to award.

CHAPTER VI.—UNSPECIFIED OFFENCES.

*Article* 70.—All offences not punishable with death, all neglects to obey any garrison or other orders, and all acts and omissions, of which any person subject to these Articles is accused, shall, though not specified in these Articles, if they be prejudicial to good order and military discipline, be taken cognizance of and punished according to the nature and degree of the offence, act or omission by any Court-martial empowered to try the person guilty of such offence, act or omission.

*Abetment.*

*Article* 71.—Every person subject to these Articles who abets, within the meaning of the Indian Penal Code, sections 107 and 108, any of the offences

specified in Articles 7, 8, 10, 13, 14, 18 and 19, may be punished with the punishment hereinbefore provided for such offence.

Every such person who abets, within the meaning of the Indian Penal Code, sections 107 and 108, any other offence punishable uuder this Act, shall be punished,

with imprisonment of any description provided by this Act for the offence so abetted for a term which may extend to one-half of the longest term of such imprisonment,

or with one-half of any other penalty awardable by the Court by which he is convicted,

or, if the offence is punishable with death or transportation for life, with transportation for a term not less than seven years, or with imprisonment (with or without hard labour, and with or without solitary confinement) for a term which may extend to ten years.

The said sections of the Indian Penal Code are set forth in Part II of the appendix to this Act.

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## TITLE III.—JURISDICTION.

### CHAPTER I.—COURTS-MARTIAL.

*Kinds of Courts-martial.*

*Article* 72.—For the purposes of these Articles, there shall be eight kinds of Courts-martial (that is to say),—

(1).—General Courts-martial.
(2).—Detachment General Courts-martial.
(3).—District Courts-martial.
(4).—Garrison Courts-martial.
(5).—Regimental Courts-martial.
(6).—Regimental Detachment Courts-martial.
(7).—Detachment Courts-martial, and
(8).—Summary Courts-martial.

(1).—*General Court-martial.*

*Appointment of General Court-martial.*

*Article* 73.—A General Court-martial may be appointed—

(*a*).—By the Commander-in-Chief of a presidency:

(*b*).—By any officer authorized to appoint General Courts-martial by warrant of the Commander-in-Chief of a presidency:

(*c*).—By any officer in actual command of Native troops who is authorized to appoint General Courts-martial by order of the Governor General of India in Council, the Governor of Fort St. George in Council, or the Governor of Bombay in Council:

(*d*).—By any officer commanding Native troops not attached to the forces of a presidency who is authorized to appoint General Courts-martial by warrant which the Governor General of India in Council has empowered the Commander-in-Chief in India to issue.

*Composition of such Court.*

*Article* 74.—Except as hereinafter provided, every General Court-martial shall, if held in British India, consist of not less than nine commissioned officers, but may, if held out of British India, consist of seven commissioned officers, if a greater number cannot be conveniently assembled.

*Composition of such Court appointed under Orders in Council.*

*Article* 75.—A General Court-martial appointed under the authority of an Order in Council shall consist of not less than five commissioned officers, and shall, if so provided in the order, be composed either of European or of Native commissioned officers at the discretion of the officer appointing it.

*Powers of such Court.*

*Article* 76.—A General Court-martial shall have power to try all persons subject to these Articles accused of mutiny or of any other offence punishable under this Act, and to pass sentences of

Death,

Transportation for life or for any period not less than seven years,

Imprisonment (with or without hard labour, and with or without solitary confinement) for any term not exceeding fourteen years,

Dismissal from the service,

Suspension from rank, pay and allowances for any stated period,

Degradation,

Loss of standing,

Reduction to the ranks,

Corporal punishment not exceeding fifty lashes,

Forfeiture of additional pay, good conduct pay, and claim to pension,

Forfeiture of arrears of pay and allowances,

Stoppages.

Whenever any person is convicted of any offence for which he shall be transported or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that all the rents and profits of his moveable

and immoveable estate during the period of his transportation or imprisonment shall be forfeited to Government, subject to such provision for his family and dependents as the Government may think fit to allow during such period.

*(2).—Detachment General Court-martial.*

*Appointment of such Court-martial.*

*Article* 77.—When any portion of Her Majesty's troops is serving in any place not in British India, and not within the dominions of the Princes and States of India in alliance with Her Majesty, wherein Her Majesty's forces are permanently stationed, a Detachment General Court-martial may be appointed:—

(*a*).—By the Commander-in-Chief of a presidency:

(*b*).—By any officer authorized to appoint Detachment General Courts-martial by warrant of the Commander-in-Chief of a presidency;

(*c*).—By the officer in actual command of such troops, upon complaint being made of an offence against the person or property of any resident of such place, committed by any person under such officer's command and subject to these Articles.

*Its Composition and Powers.*

*Article* 78.—Such Court-martial shall consist of not less than three commissioned officers, and shall have the same powers as a General Court-martial.

(3).—*District Court-martial, and*

(4).—*Garrison Court-martial.*

*Appointment of such Courts.*

*Article* 79.—A District or Garrison Court-martial may be appointed—

(*a*).—By the Commander-in-Chief of any presidency:

(*b*).—By any officer authorized to appoint District or Garrison Courts-martial (as the case may be) by warrant of the Commander-in-Chief of any presidency:

(*c*).—By any officer in actual command of Native troops authorized to appoint District or Garrison Courts-martial (as the case may be) by order of the Governor General of India in Council, the Governor of Fort St. George in Council, or the Governor of Bombay in Council.

(*d*).—By any officer commanding Native troops not attached to the forces of a presidency authorized to appoint District or Garrison Courts-martial (as the case may be) by warrant which the Governor General of India in Council has empowered the Commander-in-Chief in India to issue.

*Composition of such Courts.*

*Article* 80.—(*a*). Except as hereinafter provided, a District or Garrison Court-martial shall consist of seven commissioned officers, unless that number cannot conveniently be assembled, in which case such Court may consist of not less than five such officers.

(*b*). A District Court-martial appointed under the authority of an Order in Council, may consist of any number of commissioned officers not less than three; and may, if so provided in the Order, be composed either of European or of Native commissioned officers at the discretion of the officer appointing it.

*Officers composing such Courts.*

*Article* 81.—A District or Garrison Court-martial may, when necessary, be composed wholly of officers of the regiment or corps to which the accused belongs: Provided that on the trial of a Sub-assistant Surgeon, Hospital-assistant, Native Doctor or Warrant-officer, not more than two officers of the same regiment, corps, detachment, depôt or department as the accused shall sit upon any such Court.

*Powers of such Courts.*

*Article* 82.—A District or Garrison Court-martial shall have power to try all persons subject to these Articles, other than commissioned officers, for any offence other than mutiny made punishable by these Articles, and to pass sentences of—

Imprisonment (with or without hard labour, and with or without solitary confinement) for a term not exceeding one year,
Dismissal from the service,
Suspension from rank, pay and allowances,
Degradation,
Loss of standing,
Reduction to the ranks,
Corporal punishment not exceeding fifty lashes,
Forfeiture of additional pay, good-conduct pay and claim to pension,
Forfeiture of arrears of pay and allowances.
Stoppages.

(5).—*Regimental Court-martial.*

*Appointment of such Court.*

*Article* 83.—A Regimental Court-martial may be appointed by the officer commanding any regiment or corps.

*Composition of such Court.*

*Article* 84.—A Regimental Court-martial shall consist of not less than five commissioned officers, unless that number cannot conveniently be assembled, in which case such Court may consist of not less than three such officers.

*Powers of such Court.*

*Article* 85.—A Regimental Court-martial shall have power to try—

(*a*).—All persons subject to these Articles, other than commissioned officers, Sub-assistant Surgeons, Hospital-assistants, Native Doctors and Warrant-officers, for any offence other than mutiny, desertion or disgraceful conduct, punishable under these Articles, when committed on the line of march, or on board any vessel:

(*b*).—Any offence punishable under this Act, and not within the ordinary jurisdiction of a Regimental Court-martial, other than mutiny, desertion and disgraceful conduct, when the officer commanding the division or district directs it to be tried by a Regimental Court-martial; and

(*c*).—Any offence punishable under these Articles, other than offences not within the ordinary jurisdiction of a Regimental Court-martial—

and to pass sentences of—

Dismissal,

Loss of standing,

Reduction to the ranks,

Imprisonment (with or without hard labour and with or without solitary confinement) for a term not exceeding six months,

Corporal punishment not exceeding fifty lashes,

Forfeiture of arrears of pay and allowances,

Stoppages.

(6).—*Regimental Detachment Court-martial, and*

(7).—*Detachment Court-martial.*

*Appointment of Regimental Detachment Court-martial.*

*Article* 86.—A Regimental Detachment Court-martial may be appointed by the officer commanding a detachment of his own regiment or corps:

*Appointment of Detachment Court-martial.*

*Article* 87.—A Detachment Court-martial may be appointed,—

(*a*).—By the officer commanding any station, force or detachment of men of different regiments or corps

(*b*).—By the officer in command of any detachment when any offence not within the ordinary jurisdiction of a Regimental Court-martial (other than mutiny, desertion or disgraceful conduct), is committed on the line of march, or on board any vessel.

*Composition of such Courts.*

*Article* 88.—A Regimental Detachment Court-martial and a Detachment Court-martial shall consist of not less than five commissioned officers, unless that number cannot conveniently be assembled, in which case such Court may consist of not less than three commissioned officers.

*Powers of such Courts.*

*Article* 89.—A Regimental Detachment Court-martial and a Detachment Court-martial shall have the same powers as a Regimental Court-martial.

(8).—*Summary Courts-martial.*

*Article* 90.—(*a*). Subject to the provisions and restrictions contained in Articles 91, 92, 93, 94, 125 and 126, a summary Court-martial may be held by the European commissioned officer who is in actual command, for the time being, of any regiment or corps,

or of any detachment consisting of, or equivalent in strength to, three troops or companies,

or of any European corps or detachment to which Native details subject to these Articles are attached,

or who is in charge of any arsenal, ordnance establishment, or camp equipage depôt.

(*b*).—In detached situations, beyond sea, or out of British India, or on service in the field, or under any circumstances where, immediate example being necessary, a Detachment Court-martial cannot be assembled as provided in Article 87, and reference cannot be made to superior authority without detriment to the service, a summary Court-martial may be held by the European commissioned officer commanding a detachment of any strength:

Provided that if the officer is of less than five years' standing, he shall not carry into effect any sentence by such Court-martial, until it has received the approval of the nearest superior military officer holding a command of not less than a regiment.

*Constitution of such Courts.*

*Article* 91.—At every summary Court-martial, the commanding officer holding it shall alone constitute the Court.

*Persons triable by such Court.*

*Article* 92.—No commanding officer shall have power to try by a summary Court-martial any commissioned officer, Sub-assistant Surgeon, Hospital-assistant, Native Doctor or Warrant-officer, or any person who is not liable to trial by Courts composed of Native commissioned officers; but all other persons subject to these Articles shall be liable to trial and punishment by a summary Court-martial:

Provided that no person shall be so tried unless he is under the command of the officer holding the trial.

*Offences triable by such Court.*

*Article* 93.—Any offence against these Articles, except mutiny, may be tried and punished by summary Court-martial:

Provided that, when there is no emergent reason for immediate action, and reference can, without detriment to discipline, be made to superior military authority, a commanding officer shall not try by summary Court-martial, without such reference, any of the following offences:—

Offences under Articles 8 to 23 both inclusive, ordinarily punishable by General Court-martial only:

Disgraceful offences under Articles 54, 55, 56, 60, 61 and 64; and

Offences against such commanding officer.

*Its powers.*

*Article* 94.—A summary Court-martial held by any officer commanding a regiment or corps may award any sentence not exceeding that awardable by a District Court-martial.

A summary Court-martial held by any commanding officer other than the officer commanding a regiment or corps, may award any sentence not exceeding that awardable by a Regimental or Detachment Court-martial.

*Trial of grave offences by inferior Courts.*

*Article* 95.—Save as provided by Article 85, clauses (*a*) and (*b*), and Article 89, no commanding officer shall try by a Regimental or Detachment Court-martial offences which are by these Articles declared to be punishable by a General, District or Garrison Court-martial only. But, as it may be expedient that some such offences should be tried by inferior Courts-martial, the commanding officer of any regiment, corps or detachment shall, in every such instance, submit the case for the orders of the officer commanding the division or district in which he is serving, and the officer commanding such division

or district, whether on or without such application, may direct trial by such kind of Court-martial as he thinks fit:

Provided that mutiny shall in no case be tried save by a General Court-martial, and that desertion and disgraceful conduct shall in no case be tried by any Court-martial inferior to a District or Garrison Court-martial.

The permission to try grave offences by District or Garrison, Regimental or Detachment Courts-martial, shall be entered upon the proceedings of such Court, and in the monthly return of trials furnished to Army Head Quarters.

*Courts composed of European Officers.*

*Article* 96.—The Governor General of India, or the Governor of any presidency, may, by an Order in Council, direct that any Court-martial appointed under these Articles, shall be composed of European instead of Native commissioned officers, or authorize any general or other officer to appoint Courts-martial so composed at his discretion.

Any such Court-martial shall in such case be constituted accordingly, but shall in all other respects be governed by these Articles.

*Claim to be tried by European Officers.*

*Article* 97.—With the exception of cases of trial by Courts-martial appointed under Orders in Council, every person subject to these Articles, who is under orders for trial by Court-martial, may claim to be tried by European officers.

When any such claim is made, the Court, whether a General, District, Garrison, Regimental or Detachment Court-martial, shall be composed of European instead of Native commissioned officers; but shall in all other respects be governed by these Articles.

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## Chapter II.—Procedure.

*Limitation of trials.*

*Article* 98.—No person subject to these Articles shall be tried or punished by a Court-martial for any military offence after the expiration of three years from the date of such offence, unless the offender, by reason of absence or of some other manifest impediment, could not be arrested or confined and brought to trial within that period; in which case he shall be liable to be tried at any time not exceeding two years after such impediment shall have ceased.

*Place of trial.*

*Article* 99.—Any person subject to these Articles who commits any

offence against them, may be tried and punished for such offence in any place whatever in the same manner as if the offence had been committed in such place.

*Arrest or confinement of accused.*

*Article* 100.—Whenever any person subject to these Articles is accused of any military offence which his commanding or other superior officer considers should be tried by Court-martial, such officer shall order the accused, if not below the rank of non-commissioned officer, to be placed in arrest, or if below such rank, to be put in confinement, until he can be tried by a Court-martial, or discharged by proper authority.

No such person shall be detained in arrest or confinement longer than is necessary for the purposes of justice.

*Judge Advocate.*

*Article* 101.—It shall not be necessary to appoint a Judge Advocate to any General Court-martial appointed under the authority of an Order in Council. But every other General Court-martial shall be attended by a Judge Advocate, who shall conduct the proceedings; and every District or Garrison, Regimental or Detachment Court-martial, composed of Native commissioned officers, shall be attended by an European superintending officer of not less than four years' service, who shall conduct the proceedings.

*Interpreter.*

*Article* 102.—An interpreter shall be appointed to every Court-martial, and shall, when the Court is composed of Native officers, form part of such Court.

If no duly qualified interpreter is available at the station or place where the Court-martial sits, the officer appointing the Court, or the officer commanding in the division, district or place within or at which the trial is to be held, shall appoint any competent person to perform the duty of interpreter.

When no other qualified or competent person is available, the superintending officer, or in the case of an European Court, the president, shall perform the duty of interpreter.

No interpreter shall, as such, have a vote upon any matter.

*President.*

*Article* 103.—At every Court-martial, whether composed of European or Native commissioned officers, the senior officer shall sit as president, without special appointment as such.

In case of the death or unavoidable absence of the president, the next senior member shall take the place of president, without special appointment as such, and the trial shall proceed if the Court be still composed of the smallest number of members of which it is required by these Articles to consist.

*Conduct of Proceedings.*

*Article* 104.—In the case of any General Court-martial appointed under an Order in Council, or of any other Court-martial composed of European commissioned officers under Article 96 or 97, the president shall conduct the proceedings.

*Precedence of Native Officers.*

*Article* 105.—Risáldár majors and súbahdár majors shall take precedence according to the dates of their commissions, and above all súbahdárs or risáldárs.

Sirdár bahádurs and bahádurs shall take rank only according to their respective commissions of risáldár major, súbahdár major, risáldár, risáidár súbahdár, or jamadár.

Risáldárs shall take rank with súbahdárs, according to the dates of their commissions as risáidárs, or if they have not been risáidárs then according to the dates of their commissions as risáldárs.

*Time of trial, adjournment and re-assembly.*

*Article* 106.—Trials by Courts-martial may be carried on at any time without restriction.

The date and hour of the Court's original assembly shall be fixed by, or under the orders of, the convening officer; but the adjournment and re-assembly of a Court-martial shall be determined by the Court itself.

*Challenges.*

*Article* 107.—At all trials by Courts-martial, other than Courts-martial appointed under an Order in Council or summary Courts-martial, as soon as the Court is assembled, the names of the president and members shall be read over to the prisoner, who shall thereupon be asked by the officer conducting the proceedings, whether he objects to being tried by any officer sitting on the Court.

If the prisoner objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the Court shall, in the absence of the challenged officer, decide on the objection.

When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or admitted, the Court shall proceed as hereinafter provided.

*Interpreter's oath.*

*Article* 108.—The officer conducting the proceeding shall then administer to the interpreter, or, when necessary, shall himself make as interpreter, an affirmation or oath [a] as follows :—

"I solemnly affirm, in the presence of Almighty God, that I "will faithfully interpret and translate the proceedings of this Court; and "that I will not divulge the sentence until it shall have been published by "authority; and, further, that I will not disclose or discover the vote or opinion "of any particular member of the Court unless required to give evidence "thereof by a Court of Justice or Court-martial, in due course of law."

When oath is made instead of affirmation, the oath shall commence—

"I do swear that I will faithfully interpret," &c., and shall be in all other respects in the above form, and shall end with the words, "So help me God."

*Oaths of President and Members.*

*Article* 109.—The interpreter, or the officer conducting the proceedings, shall then administer to the president and each of the members of the Court-martial an affirmation or oath in such of the following forms as shall be appropriate :—

*For European Officers.*

"I solemnly affirm, in the presence of Almighty God, that I "will duly administer justice, according to the Indian Articles of War, without "partiality, favour or affection; and if any doubt shall arise, then, according "to my conscience, the best of my understanding, and the custom of war in "the like cases; and that I will not divulge the sentence of the Court until "it shall be published by authority; and, further, that I will not disclose or "discover the vote or opinion of any particular member of the Court, unless "required to give evidence thereof by a Court of Justice or a Court-martial, "in due course of law."

When oath is made instead of affirmation, the oath shall commence—

"I do swear that I will duly administer justice," &c., and shall be in all other respects in the above form, and shall end with the words, "So help me God."

[a] The Indian Oaths Act, No. X of 1873, does not apply to proceedings before Courts-martial, see section 3.

*For Native Officers of the Mussulmán or Hindú Religion, or of any other Religion for which it may be appropriate.*

"I solemnly affirm, in the presence of Almighty God, that "I will duly administer justice according to the Indian Articles of War, with-"out partiality, favour or affection; and if any doubt shall arise, then, accord-"ing to my conscience, the best of my understanding, and the custom of war "in the like cases; and that I will not divulge the sentence of the Court "until it shall be published by authority; and, further, that I will not disclose "or discover the vote or opinion of any particular member of the Court, unless "required to give evidence thereof by a Court of Justice or a Court-martial, "in due course of law."

*Judge Advocate's oath.*

*Article* 110.—The interpreter, or any other European officer of the Court, shall then administer to the Judge Advocate, or superintending officer, the following affirmation or the following oath:—

"I solemnly affirm, in the presence of Almighty God, that "I will not, upon any account whatsoever, disclose or discover the vote or "opinion of any particular member of the Court-martial, unless required to "give evidence thereof as a witness by a Court of Justice or a Court-martial, "in due course of law; and that I will not, unless it be necessary for the due "discharge of my official duties, disclose the sentence of the Court until it "shall be published by authority."

When oath is made instead of affirmation, the oath shall commence—

"I do swear that I will not, upon any account whatsoever, disclose," &c., and shall be in all other respects in the above form, and shall end with the words, "So help me God."

*Oaths of Witnesses.*

*Article* 111.—Every person giving evidence at a Court-martial shall be examined on oath, or on affirmation, where affirmation is appropriate and admissible, and shall be duly sworn or affirmed in such of the following forms as may be appropriate:—

*For Europeans and Persons professing the Christian Religion.*

"I do swear that what I shall state shall be the truth, the "whole truth, and nothing but the truth. So help me God"—

*or,*

"I solemnly affirm, in the presence of Almighty God, that "what I shall state shall be the truth, the whole truth, and nothing but the "truth."

*For Mussulmán, Hindú, or other Native Witnesses.*

"I solemnly affirm, in the presence of Almighty God, that "what I shall state shall be the truth, the whole truth, and nothing but the "truth."

*Oaths to be binding on conscience.*

*Article* 112.—If none of the forms of oath or affirmation prescribed in Articles 108 to 111, both inclusive, are appropriate to any officer of a Court-martial, or any witness, such officer or witness shall make oath or affirmation to the purport hereinbefore prescribed, in such form as the Court ascertains to be according to his religion or otherwise binding on his conscience.

*Re-swearing in case of several trials.*

*Article* 113.—When more trials than one are held by the same Court-martial, every officer of the Court and every witness before the Court, shall make a fresh oath or affirmation, as hereinbefore prescribed, notwithstanding any previous oath or affirmation.

*Presumptive evidence of desertion.*

*Article* 114.—If at any trial for desertion, it is proved that the person tried has been absent without authority for the space of two months, such proof shall be deemed sufficient presumptive evidence of desertion; and the Court may thereupon convict him of desertion, unless he proves that his absence was not wilful, or otherwise rebuts the presumption of desertion arising from the proof of his unauthorized absence.

*Reference by prisoner to Government Officer.*

*Article* 115.—If at any trial for desertion, absence without leave, overstaying leave, or not rejoining when warned for service, the person tried states, in his defence, any sufficient or reasonable excuse for his unauthorized absence, and refers in support thereof to any officer in the civil or military service of Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the Court shall address such officer, and adjourn until his reply is received.

The written reply of any officer so referred to shall, if signed by him, be received in evidence, and have the same effect as if made on oath or affirmation before the Court.

If the Court is dissolved before the receipt of such reply, or if the Court omits to comply with the provisions of this Article, the convening officer may,

at his discretion, annul the proceedings and order a fresh trial by the same or another Court-martial.

*Trial for desertion.*

*Article* 116.—On any trial for desertion the accused may be found guilty either of desertion or of absence without leave.

*Evidence of previous convictions and general character.*

*Article* 117.—When any person subject to these Articles has been convicted by a Court-martial of any military offence, such Court-martial shall enquire into, and receive and record evidence of any previous convictions of such person, either by a Court-martial, or by a Court of Justice; and shall further, in the case of any person below the rank of a warrant-officer, enquire into and record the general character of such person.

Evidence received under this Article may be either oral, or in the shape of entries in, or certified extracts from, the Court-martial books; and it shall not be necessary to prove the signature to such certified extract, nor shall it be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

*Voting of Members.*

*Article* 118.—The members of a Court-martial shall preserve order; and in giving their votes upon any matter, shall begin with the junior in rank.

Except where otherwise specially provided, every decision shall be passed by a majority of votes; and where there is an equality of votes, as to either finding or sentence, the decision shall be in favour of the person tried.

In matters other than the finding or sentence, the president shall have a casting vote.

*Majority requisite to sentence of death.*

*Article* 119.—No sentence of death shall be passed by any General Court-martial, other than a General Court-martial held under an Order in Council, unless such sentence is concurred in by at least two-thirds of the officers composing the Court, or by five out of seven, or four out of five officers, when the Court consists of either of those numbers.

A General Court-martial held under an Order in Council may, by the votes of a majority of such Court, pass a sentence of death.

*Revision of finding or sentence.*

*Article* 120.—The finding or sentence of any Court-martial may be revised by order of the officer authorized to dispose of the proceedings.

But no finding or sentence of a Court-martial shall be revised more than once; nor shall any evidence, save evidence as to previous convictions or general character, be received on a revision.

The Court, on revision, shall consist of the same, and the same number of, officers as were present when the original decision was passed, unless any such officer or officers shall be unavoidably absent.

In case of such unavoidable absence, the cause thereof shall be duly certified in the proceedings, and the Court shall proceed with the revision, provided it still consists of the smallest number of officers of which such Court is by these Articles required to consist.

*Procedure to be generally followed.*

*Article* 121.—The procedure laid down in the Articles 106 to 119 (both inclusive) shall be adopted at all trials by Courts-martial save when otherwise specially ordered or provided.

*Summoning Witnesses.*

*Article* 122.—The Judge Advocate, in the case of a General Court-martial, and the officer ordering the trial in the case of any other Court-martial may, by summons under his hand, require the attendance before the Court, at a time and place to be mentioned in the summons, of any person, either to give evidence or to produce documents.

In the case of a witnsss amenable to military authority, the summons shall be sent to the officer in actual command of the corps to which he belongs, and such officer shall serve it upon him accordingly.

In the case of any other witness, the summons shall be sent to the Magistrate within whose jurisdiction he may be, or resides, and such Magistrate shall give effect to the summons as if the witness were required in the Court of such Magistrate.

When a witness is required to produce any particular document in his possession or power, the summons shall describe it with convenient certainty.

*Contempts of Court.*

*Article* 123.—Any witness duly summoned, or any other person who commits any contempt of Court in the presence of a Court-martial, or who commits any of the offences described in Article 56, 67 or 68, shall, if subject to these Articles, be proceeded against as they direct; and shall, if not so subject, be delivered over to a Magistrate, who shall proceed against the offender in the same manner as if the offence had been committed before or towards a Court of criminal justice.

*Privilege of witnesses.*

*Article* 124.—Every witness, while proceeding to, attending on, or returning from, any Court-martial before which he has been summoned, shall be privileged from arrest in any civil suit or proceeding; and if arrested in any such suit or proceeding, may be discharged by order of such Court-martial.

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SUMMARY COURTS-MARTIAL.

*Persons to attend summary Court-martial.*

*Article* 125.—Every summary Court-martial shall be attended by two commissioned officers, European or Native, exclusive of the commanding officer holding the trial.

An interpreter shall, in every case, attend at a summary Court-martial; but when no other competent interpreter is available, the officer holding the trial, or one of the officers in attendance thereat, may perform the duty of interpreter.

No interpreter shall, as such, have a vote upon any matter.

*Proceedings of such Courts.*

*Article* 126.—The proceedings of every summary Court-martial shall be conducted in presence of all the officers specified in Article 125, and shall be recorded in the English language in the manner usual at other Courts-martial.

*Oaths of interpreter and officer holding trial.*

*Article* 127.—The interpreter at a summary Court-martial shall first make oath or affirmation, as provided by Article 108, down to the words "published by authority;" and the commanding officer holding the trial shall then make oath or affirmation, as provided in Article 109, down to the words "custom of war in the like cases."

The officers in attendance shall not, as such, be sworn or affirmed.

*Evidence.*

*Article* 128.—All evidence at a summary Court-martial shall be taken on oath or affirmation, as provided by Article 111.

Any previous convictions on record against the offender, and his general character, shall be recorded by the commanding officer as of his own knowledge, or proved as provided by Article 117.

*Signature and transmission of proceedings.*

*Article* 129.—The proceedings in every case in which a Regimental Court-martial or a Detachment Court-martial tries an offence not within the ordinary

jurisdiction of a Regimental Court-martial, committed on the line of march or on board a vessel, shall be sent for the information of the Commander-in-Chief of the presidency to which the regiment or detachment belongs, and of the presidency within which they may be, or to which they are proceeding.

The proceedings of every summary Court-martial shall, when closed, be signed by the commanding officer and the officers attending the trial, and shall, without delay, be forwarded to the officer commanding the division or district within which the trial was held; and such officer, or the Commander-in-Chief in India, or of the presidency in which the trial was held, is hereby authorized to set aside the trial for reasons based on the merits of the case, but not on any merely technical grounds.

When a summary Court-martial is held in a force not attached to any presidency, the officer commanding such force may exercise the powers given in this Article in regard to setting aside trials.

The proceedings of every other Court-martial shall, when closed, be signed by the members, and shall, without delay, be forwarded or delivered to the officer under whose orders the trial has been held.

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## CHAPTER III.—SENTENCES.

### *Of General Courts-martial.*

*Article* 130.—(*a*). Any General Court-martial may, for any offence falling under Articles 7 to 23, both inclusive, and for such offences only, sentence any person subject to its jurisdiction to death, or to transportation for life, or for any period not less than seven years, or to imprisonment (with or without hard labour, and with or without solitary confinement) for any period not exceeding fourteen years.

(*b*).—Any General Court-martial may, for any offence falling under Article 54, 55 or 56 of these Articles, sentence any person as aforesaid to the penalties attached to such offences in Article 57, and may, for any other disgraceful conduct, award the penalties attached to that offence in Articles 136, 137 and 138.

(*c*).—Any General Court-martial may, in any case where no special punishments are prescribed, or, in addition to any special punishment, where so authorized, sentence any person amenable thereto to any punishment specified in Articles 131, 132, 133, 135, 137 and 138.

(*d*).—No Court-martial, other than a General Court-martial, shall have power to award a sentence of death, transportation, or imprisonment exceeding one year.

Any General Court-martial may sentence any commissioned officer to be dismissed the service or to be suspended from rank, pay and allowances for any stated period; or to be placed one or more steps lower in the list of his rank.

No Court-martial, other than a General Court-martial, shall have power to try or punish a commissioned officer.

*Of General, District or Garrison Courts-martial.*

*Article* 131.—Any General, District or Garrison Court-martial may sentence a sub-assistant surgeon, hospital-assistant, native doctor or warrant-officer to be dismissed the service; or to be suspended from rank, pay and allowances for any stated period; or to be reduced to a lower grade or class in his department, or to be placed one or more steps lower in the list of his rank.

No Court-martial inferior to a District or Garrison Court-martial shall have power to try or punish any sub-assistant surgeon, hospital-assistant, native doctor or warrant-officer.

*Reduction, dismissal, corporal punishment and imprisonment.*

*Article* 132.—Any Court-martial may sentence a non-commissioned officer to be reduced to the ranks; or to be placed one or more steps lower in the list of his rank;

or may sentence any person subject to these Articles, below the rank of warrant-officer, to be dismissed the service; or to suffer corporal punishment not exceeding fifty lashes; or to imprisonment with or without hard labour, and with or without solitary confinement, for such periods as are hereinafter prescribed.

*Limit of imprisonment.*

*Article* 133.—Except in the cases provided for in Articles 24 and 57, the limit of imprisonment, whether with or without hard labour and solitary confinement, awardable by Courts-martial under these Articles, shall be—for General Courts-martial two years; for District or Garrison Courts-martial one year; and for Regimental or Detachment Courts-martial six months.

*Solitary confinement.*

*Article* 134.—No person shall, under any such sentence, or under one or more sentences, be kept in solitary confinement more than eighty-four days in one year, or more than fourteen days at one time, and there shall be, between the periods of solitary confinement, intervals of ordinary imprisonment at least equal to the period of solitary confinement.

*Reduction to ranks.*

*Article* 135.—No non-commissioned officer shall be sentenced by any Court-martial to imprisonment or to corporal punishment, without being first sentenced to reduction to the ranks.

*Forfeiture of pay and pension.*

*Article* 136.—On a conviction of any disgraceful conduct, a General, District or Garrison Court-martial may, in addition to any other punishment which it is empowered to award, sentence the offender to forfeit all advantage as to additional pay, good-conduct pay and claim to pension on discharge, which might otherwise have accrued from the length or nature of his former service; or to forfeit all such advantage absolutely, whether it has accrued from former service or may accrue from future service.

*Forfeiture of arrears of pay.*

*Article* 137.—On any conviction of disgraceful conduct, if the offender be sentenced to dismissal from the service, or if his sentence involve dismissal under Article 155 or Article 157, he shall further be sentenced to forfeit any arrears of pay and allowances, or other public money, due to him at the time of his dismissal, or such portion thereof as may be required to make good any proved loss or damage arising out of his disgraceful conduct.

Any Court-martial may, in addition to dismissal, or to any punishment involving dismissal under Article 157, sentence any person whom it is authorized to try, to forfeit any arrears of pay and allowances, or other public money, due to him at the time of his dismissal, or such portion thereof as may be required to make good any proved loss or damage arising out of his misconduct.

*Stoppages.*

*Article* 138.—Every offender convicted of disgraceful conduct, whose dismissal from the service is not so awarded or involved as aforesaid, shall, in addition to any other punishment, be sentenced by the Court to be put under stoppages, to the extent provided by Article 139, until the amount of any proved loss or damage arising out of such conduct be made good.

And any Court-martial, in addition to any punishment other than, or not involving, dismissal, may sentence any person as aforesaid to be put under stoppages, to the extent specified in Article 139, until any proved loss or damage arising out of his misconduct be made good.

*Extent of Stoppages.*

*Article* 139.—Stoppages under Article 138 shall not be awarded, whether under one or more than one sentence, to a greater extent than, in the case of an officer, two-thirds, or in the case of any other person, one-half of his monthly pay and allowances; and shall not be so awarded as to extend beyond one year.

Any public money issued to the offender within the said period of one year, shall, for the purposes of this Article, be deemed to be pay and allowances.

*Sentence of Transportation or Imprisonment on person already sentenced.*

*Article* 140.—Whenever a sentence of transportation or imprisonment is passed by any Court-martial upon an offender already under sentence of transportation for a limited term, or of imprisonment, the Court may award transportation or imprisonment to commence on the expiration of such previous sentence; notwithstanding that the aggregate of any terms of imprisonment may thus exceed the limit of imprisonment which such Court is by these Articles empowered to award.

*Form of sentence of death.*

*Article* 141.—In awarding a sentence of death, a General Court-martial shall, at its discretion, direct that the offender shall "suffer death by being hanged by the neck until he be dead," or shall "suffer death by being shot to death."

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## CHAPTER IV.—CONFIRMATION AND COMMUTATION OF SENTENCES.

*Sentences to be confirmed or otherwise disposed of.*

*Article* 142.—Save in the case of a summary Court-martial, no decision or sentence of any Court-martial shall be carried into effect until confirmed or otherwise disposed of by—

(*a*).—In the case of any Court-martial for the trial of any person within his command—the Commander-in-Chief of a presidency: or

(*b*).—In the case of any Court-martial for the trial of any person under his command—any officer authorized in this behalf by warrant of the Commander-in-Chief of any presidency, but subject to any restrictions contained in the warrant: or

(*c*).—In the case of any Court-martial for the trial of any person under his command—any officer in actual command of troops who is authorized in

this behalf by the Governor General of India in Council, the Governor of Fort Saint George in Council, or the Governor of Bombay in Council:

(*d*).—In the case of any Court-martial for the trial of any person under his command—any officer commanding Native troops not attached to the forces of a presidency who is authorized in this behalf by warrant of the Commander-in-Chief in India:

(*e*).—In the case of a Detachment General Court-martial held beyond the limits of British India, and not within the dominions of the Princes and States of India in alliance with Her Majesty—the officer appointing such Court-martial, unless the sentence of such Court-martial exceeds that awardable by a District or Garrison Court-martial, in which case the commander of Her Majesty's forces with which the offender is serving, shall alone have power to confirm, remit, commute or annul such sentence:

(*f*).—In the case of a Regimental Court-martial for the trial of any person under his command—the officer appointing such Court-martial:

(*g*).—In the case of a Regimental or other Detachment Court-martial for the trial of any person under his command, where the detachment consists of, or is equal in strength to, three troops or companies—the commanding officer:

(*h*).—But when any such Court-martial is held in a detachment of less than, or not equal in strength to, three troops or companies, the sentence shall be submitted for confirmation to the officer commanding the prisoner's regiment, or to the nearest superior officer holding a command of not less than a regiment, who is hereby empowered to dispose of such sentence in like manner as if the trial had been held by his own order:

Provided that, in detached situations beyond sea, or out of British India, or on service in the field, or in cases where immediate example is necessary and reference cannot be made to such regimental or other superior commanding officer without detriment to the service, the officer commanding any detachment, whatever its strength, may dispose of and carry out the sentence of any Detachment Court-martial held by his order.

(*i*).—Any Commander-in-Chief or officer mentioned in clauses (*a*), (*b*), (*c*), (*d*), (*e*), (*f*) and (*g*) of this Article may, subject to the provisions of these Articles, and to the restrictions (if any) in the warrant (if any) by which he is authorized in this behalf, mitigate, remit, commute or annul any sentence to the execution of which his confirmation is necessary.

*Sentence of death.*

*Article* 143.—When a sentence of death has been passed by any General Court-martial, the officer so authorized, in accordance with these Articles, may

confirm such sentence and cause it to be carried into effect, or may, in lieu thereof, sentence the offender to transportation for life, or for any term not less than seven years, or to imprisonment (with or without hard labour, and with or without solitary confinement) for any term not exceeding fourteen years.

*Sentence of penal servitude or transportation.*

*Article* 144.—Notwithstanding anything hereinbefore contained, whenever any person, being an European or American or a legitimate lineal descendant of an European or American, is convicted of an offence punishable under these Articles with transportation, the Court shall sentence the offender to penal servitude instead of transportation, according to the provisions of Act No. XXIV of 1855.

When a sentence of transportation has been awarded by any General Court-martial, the officer authorized in accordance with these Articles may confirm the sentence and cause it to be carried into effect, or may, in lieu thereof, sentence the offender to imprisonment (with or without hard labour, and with or without solitary confinement) for any term not exceeding fourteen years, and not exceeding the term of transportation awarded by the Court.

*Sentence of dismissal on Commissioned Officers, &c.*

*Article* 145.—A sentence of dismissal from the service passed by any Court-martial under these Articles upon a commissioned officer, sub-assistant surgeon, hospital-assistant, native doctor or warrant-officer, may be commuted by the officer duly authorized to confirm or otherwise dispose of such sentence, to suspension from rank, pay and allowances for any stated period.

*Any sentence on Commissioned Officers, &c.*

*Article* 146.—Except on foreign service, or when reference cannot, without detriment to discipline, be made to superior military authority, no decision or sentence passed upon any commissioned officer, sub-assistant surgeon, hospital-assistant, native doctor or warrant-officer, shall be carried into effect until confirmed or otherwise disposed of by the Commander-in-Chief of the presidency to which the offender belongs, or, when the offender is serving in a presidency, by the Commander-in-Chief of such presidency, or, when the offender belongs to a force not attached to any presidency, by the officer commanding the force.

*Sentence of corporal punishment.*

*Article* 147.—A sentence of corporal punishment passed by any Court-martial may be commuted, by the officer authorized to confirm or otherwise dispose of such sentence, to dismissal from the service, or to imprisonment

without hard labour, and with or without solitary confinement, for any period not exceeding one year, which might have been awarded by such Court-martial.

*Sentence of imprisonment with hard labour.*

*Article* 148.—A sentence of imprisonment with hard labour passed by any Court-martial may be commuted, by the officer authorized to confirm or otherwise dispose of such sentence, to dismissal from the service, or to imprisonment without hard labour, and with or without solitary confinement, for the term mentioned in the sentence, or for any shorter term.

*Sentence of reduction with corporal punishment or imprisonment.*

*Article* 149.—The officer duly authorized to confirm or otherwise dispose of the sentence of any Court-martial may, in the case of a non-commissioned officer sentenced by any such Court, mitigate a sentence of reduction to the ranks followed by corporal punishment or imprisonment to reduction only,

*Commutation of sentence of dismissal on Non-Commissioned Officers.*

or may commute a sentence of dismissal from the service to reduction to the ranks.

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## CHAPTER V.—Execution of Sentences.

*Transportation.*

*Article* 150.—Whenever the sentence of a General Court-martial awarding transportation is duly confirmed, or whenever a sentence of death is duly commuted to transportation, the offender shall be delivered over with a warrant of commitment, containing an authenticated copy of the sentence or commuted sentence, to the officer in charge of the nearest jail; and such officer shall give effect to the sentence accordingly, under such order as he may receive from the Local Government.

*Imprisonment with hard labour.*

*Article* 151.—Whenever the duly confirmed sentence of any Court-martial awards imprisonment with hard labour, or whenever the sentence of any Court-martial is duly commuted to such imprisonment, the offender shall be delivered over with a warrant of commitment, containing an authenticated copy of the said sentence or commuted sentence, to the officer in charge of the nearest jail; and such officer shall detain the offender, under the rules in force, in such jail, according to the exigency of the warrant, or until he is discharged by due course of law.

*Place of imprisonment.*

*Article* 152.—The Commander-in-Chief of a presidency may, as occasion requires, direct that any person under his command and sentenced under

these Articles to imprisonment, shall be confined in any jail or other fit place for confinement, situate within the local limits of such command, or may order his removal from any place of confinement under military control to any other such place, or to any jail or other fit place of confinement situate within such local limits.

The officer commanding any force not attached to any presidency shall have the like powers so far as regards persons under his command and jails or other places of confinement situate within the local limits of such command.

*Transfer to military custody.*

*Article* 153.—When any person subject to these Articles is confined in any jail or other place not subject to military control, under a sentence of transportation or imprisonment, whether passed by a Court-martial or by a Court of criminal justice, the Government of India, or the Local Government of the presidency or place wherein such person is confined, may order his transfer to military custody,

or may order his removal from one to any other such place of confinement within the territories of such Government.

The period during which such person is in custody during his removal shall be reckoned as part of his term of transportation or imprisonment.

*Forfeiture of pay during imprisonment.*

*Article* 154.—Any person subject to these Articles in receipt of public pay, who is imprisoned in any place under the sentence, or commuted sentence, of a Court-martial, or a Court of criminal justice, shall, during such imprisonment, if his sentence does not involve dismissal under Article 155 or Article 157, forfeit all pay and allowances, and be entitled to subsistence only, according to the rates prescribed in the regulations of the Government to which he is subject.

And any such person in confinement in any place whatsoever, whether as a punishment by his commanding officer, or under any charge of which he is subsequently convicted, shall, during such confinement, forfeit all pay and allowances, and be entitled to subsistence only, according to the regulations of the Government to which he is subject.

*Striking Convict off strength of Regiment.*

*Article* 155.—Every person sentenced by any Court-martial, or by any Court exercising jurisdiction in criminal cases, to transportation or to imprisonment with hard labour for any term exceeding three months, shall, in the case of a sentence by a Court-martial, from the date of confirmation of such

sentence, and in the case of a sentence by a criminal Court, from the date of such sentence, be struck off the strength of the regiment, corps or department to which he belongs.

*Non-re-admission of Convict.*

*Article* 156.—No person who has undergone any such period of transportation or imprisonment with hard labour, shall be re-admitted to the service, or be entitled to any pension :

Provided that in the case of any illegal sentence duly annulled as aforesaid, or of a pardon under Article 160, such person may, by order of the Government when the offence is non-military, or by order of the Commander-in-Chief of the presidency when the offence is military, be re-admitted to service, or pension, as the case may be.

*Dismissal with ignominy.*

*Article* 157.—Any person below the rank of warrant-officer sentenced under these Articles to dismissal, or to imprisonment with hard labour, or to corporal punishment for disgraceful conduct, shall, on the confirmation of such sentence, be dismissed with ignominy from the service.

*Publication of sentence for disgraceful conduct.*

*Article* 158.—A copy of every confirmed sentence of dismissal, imprisonment with hard labour, or corporal punishment for disgraceful conduct, and of the orders passed thereupon, shall be sent by the Adjutant General of the Army to the chief civil or political officer of the district wherein the offender's place of residence is situated ; and such officer shall publish the sentence and orders at the said place in such manner as may there be usual.

*Sentences of summary Courts-martial.*

*Article* 159.—Any sentence awarded by a summary Court-martial may be carried into effect forthwith on the commanding officer's own authority, and all provisions contained in Articles 151, 152, 153, 154, 155, 156, 157, 158, 160 and 161 as to execution of sentences and disposal of prisoners, shall equally apply to persons sentenced by summary Court-martial.

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## CHAPTER VI.—Pardons and Remissions.

*Pardon of person convicted of military offence.*

*Article* 160.—The Governor General of India in Council, as regards any person subject to these Articles who has been convicted by a Court-martial of a military offence, and the Governors of Fort St. George in Council, and of

Bombay in Council, and the Commander-in-Chief of any presidency, as regards any such person within the territories subject to such Government, or under the command of such Commander-in-Chief, shall have power to pardon such person, and may, instead of granting a full pardon to any such person, remit wholly or in part any punishment awarded to him by a Court-martial,

and may order the restoration to such person of any service or other advantage forfeited under his sentence.

*Release of prisoners.*

*Article* 161.—Any officer in charge of a jail, on receiving a notification under the hand of a Secretary to the Government of India, or to the Government of Fort St. George, or to the Government of Bombay, or under the hand of the Commander-in-Chief of any presidency, or of the officer commanding any force not attached to a presidency, or any division or district, that the sentence under which any person subject to these Articles is imprisoned in such jail, has been annulled or remitted, or that any such person has been pardoned under Article 160, shall, on the authority of such notification alone, immediately release the prisoner or return him to military custody.

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## CHAPTER VII.—Regimental Courts of Enquiry.

*Article* 162.—If any person subject to these Articles is, without due authority, absent from his duty for two months, a regimental Court of enquiry, composed of European or Native commissioned officers, or of both in conjunction, shall forthwith assemble, and having received proof on oath or affirmation of the unauthorized absence, shall declare the same, and the period thereof; and the officer commanding the regiment or corps shall record such declaration in the regimental books.

If the person absent does not afterwards surrender or is not apprehended, such record shall have the legal effect of a conviction of desertion.

If he surrenders or is apprehended, such record, or a copy thereof, purporting to bear the signature of the officer having the custody of the regimental books shall, on the trial of such person for desertion, be presumptive evidence of the facts therein recorded; and on proof of the identity of the prisoner with the person therein mentioned, he may be found guilty of desertion.

*Persons absent as Prisoners of War.*

*Article* 163.—No person subject to these Articles shall be entitled to any pay or allowances or other public money, or to reckon service during any absence as a prisoner of war.

But when such person rejoins the service, enquiry shall be made by a Court-martial into the circumstances of his absence; and unless it is proved to the satisfaction of such Court that he was taken prisoner through his own wilful neglect of duty, or that he had served with or under, or aided, the enemy, or that he had not, as soon as possible, returned to the service, he may be recommended by the Court to receive either the whole or any portion of the arrears due to him, and to reckon his service.

Such recommendation duly confirmed by the Commander-in-Chief of the presidency, or by the officer commanding any force not attached to a presidency, to which the said person belongs, shall entitle him to receive such arrears and reckon service accordingly.

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## TITLE IV.—Powers of Officers independently of trial.

*Reduction to ranks.*

*Article* 164.—The Commander-in-Chief of a presidency, and the officer commanding any force not attached to a presidency, shall have, respectively, power to reduce to the ranks non-commissioned officers under their respective command.

*Minor Punishments.*

*Article* 165.—The Commander-in-Chief in India shall, under the authority of the Governor General in Council, prescribe the minor punishments to which persons subject to these Articles shall for light offences be liable, without the intervention of a Court-martial, and shall specify the officer or officers by whom, and the extent to which, such minor punishments may be awarded.

No such minor punishment shall be awarded by a Court-martial; and, unless otherwise specially provided by the said Commander-in-Chief, no commissioned officer, sub-assistant surgeon, hospital-assistant, native doctor or warrant-officer, shall be liable to any such minor punishment.

Good-conduct pay shall not necessarily be forfeited on the infliction of a minor punishment, but forfeiture thereof may be awarded as a substantive punishment, either by order of the commanding officer or by sentence of a Court-martial, as may from time to time be prescribed in the General Orders of the Commander-in-Chief in India or of the Commander-in-Chief of the presidency, as the case may be.

Whenever a soldier is convicted by a Court-martial, his good-conduct pay shall cease.

Forfeiture of good-conduct pay may be awarded in addition to any other minor punishment.

*Offences of Native Followers.*

*Article* 166.—For any offence in breach of good order, the commanding officer of any regiment, corps or detachment, whether European or Native, in camp, or at any frontier-post at which troops are stationed, and to which this Article may be specially extended by the Governor General of India in Council, the Governor of Fort St. George in Council, the Governor of Bombay in Council, or any other Local Government, may sentence any Native follower of such regiment, corps or detachment, if above the degree of a menial servant, to pay a fine not exceeding fifty rupees, or, in default of payment, or in lieu thereof, to imprisonment for any period not exceeding thirty days; or if the Native follower be not above the degree of a menial servant, to imprisonment not exceeding seven days, or to corporal punishment not exceeding twelve strokes of a rattan.

Imprisonment awarded under this Article may be carried out in a military guard, or in a jail, as ordered by the said commanding officer; and the officer in charge of any jail shall, on the delivery to him of the person of the offender, with a warrant under the hand of the said commanding officer, detain the offender according to the exigency of the warrant, or until he is discharged by due course of law.

*Complaints against Officers.*

*Article* 167.—Any person subject to these Articles, who deems himself wronged by any superior or other officer, may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the officer commanding the same.

When the officer complained against is the officer to whom any other complaint should, under this Article, be preferred, the aggrieved person shall complain to such officer's next superior officer.

No such complaint shall be made to any officer other than those indicated in the former part of this Article.

Every officer receiving any such complaint shall examine into it, and, when necessary, refer it to superior authority.

Every such complaint shall be preferred through such channels as may be from time to time prescribed by proper authority; and any person preferring a frivolous or groundless complaint shall be liable to trial by any Court-martial competent to try him, and to such punishment, other than dismissal, corporal punishment, or imprisonment with hard labour, as the Court is empowered by these Articles to award.

*Provost-marshals.*

*Article* 168.—For the prompt and instant repression of irregularities and offences committed in the field or on the line of march, provost-marshals shall be appointed by the Commander-in-Chief of the presidency, or the officer commanding the forces in the field ; and the powers and duties of such provost-marshals shall be regulated according to the established custom of war and the rules of the service.

*Their duties and powers.*

*Article* 169.—The duties of a provost-marshal so appointed are to take charge of prisoners confined for offences of a general description, to preserve good order and discipline, and to prevent breaches of the same by persons belonging or attached to the army.

The provost-marshal may punish, corporally, then and there, any person amenable to these Articles below the rank of warrant-officer, who, in his view or in the view of any of his assistants, commits any breach of good order and military discipline :

Provided that such punishment shall be limited to the necessity of the case, and shall accord with the orders which the provost-marshal may from time to time receive from the officer commanding the troops :

Provided also that the orders of the said commanding officer shall in no case authorize such corporal punishment in excess of that awardable by sentence of a Court-martial.

If the actual commission of the offence is not witnessed by the provost-marshal, or any of his assistants, but sufficient proof can be obtained of the offender's guilt, he shall report the case to the commander of the troops, who shall deal with the case as he may deem most conducive to the maintenance of good order and military discipline.

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## TITLE V.—Non-military Offences.

*Offences committed within jurisdiction of Criminal Court.*

*Article* 170.—Any person subject to these Articles, who, at any place in British India within the jurisdiction of any Court of criminal justice established by Her Majesty, or by the Government of India, or by the Local Government, is accused of any offence against the Indian Penal Code, and not included in the foregoing Articles, shall be delivered over to the nearest Magistrate to be proceeded against according to law.

All persons in, or attached to, the army, are hereby required, upon application duly made to them for that purpose, to assist the officers of justice in apprehending and securing any such accused person.

Any person in, or attached to, the army, wilfully neglecting or refusing so to assist shall be punished with any punishment, other than death or transportation, awardable under these Articles.

*Offences committed out of British India.*

*Article* 171.—In any place out of British India, offences against the Indian Penal Code, and not included in the foregoing Articles, shall, when committed by any person amenable to these Articles, be cognizable by a General Court-martial to be convened by any officer who is empowered by warrant, or Order in Council, or by Article 77, to appoint General Courts-martial.

*General Court-martial for trial of such offences.*

*Article* 172.—The provisions of these Articles as to the composition and procedure of General Courts-martial, shall, with the exception of those contained in Article 117, apply to General Courts-martial for the trial of non-military offences:

Provided that such General Courts-martial shall, in every case, be attended by a Judge Advocate.

*Sentences of such Court.*

*Article* 173.—A General Court-martial held for the trial of a non-military offence, shall, on the conviction of any offender, award punishment in accordance with the provisions of the Indian Penal Code.

*Confirmation of sentences.*

*Article* 174.—No decision or sentence passed by any such General Court-martial shall be carried into effect until confirmed or otherwise disposed of by the authority which, under these Articles, is empowered to confirm or otherwise dispose of the sentence of such General Court-martial; and no sentence of death shall be carried into effect until confirmed by the Commander-in-Chief of the presidency to which the offender belongs, or, when the offender is beyond the limits of British India, until confirmed by the officer commanding Her Majesty's forces with which the offender is serving, or when the offender does not belong to any presidency, until confirmed by the Commander-in-Chief in India.

*Commutation of sentences.*

*Prisoners.*

*Article* 175.—All the provisions contained in Articles 143, 144, 148, 150, 151, 152, 153, 154, 155, 156 and 161, relating to the disposal of sentences and of sentenced prisoners, shall apply to persons sentenced by a General Court-martial for a non-military offence.

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TITLE VI.—EFFECTS OF DECEASED MEN AND OF DESERTERS.

*Article* 176.—When any person subject to these Articles dies or is killed in the field, the officer commanding the regiment, corps or detachment, or the officer in charge of the department to which such person belonged, shall, if no representative in interest of such person be on the spot, secure his effects in camp or quarters, and cause an inventory thereof to be made, and a duplicate of such inventory to be lodged with the officer commanding, or in charge of, the regiment, corps, detachment or department to which the deceased belonged.

*Sale of effects and discharge of debts.*

*Article* 177.—If there be no representative on the spot, or readily accessible, such officer shall, without any representation taken out, publicly sell such part of the effects of the deceased in camp or quarters as do not consist of money, and shall pay thereout the debts of the deceased in camp or quarters, the expense of his funeral ceremonies, and his regimental debts of every description; and shall pay the surplus (if any) to the representative in interest of the deceased.

*Remittal of surplus.*

*Article* 178.—In the event of no claim for the surplus of the deceased person's estate being made and established within twelve months of his death, the amount in the hands of the officer in charge of the estate shall be remitted to the Controller General of Accounts at Calcutta, or to the Accountant General to the Government of Fort St. George or of Bombay; or, if the deceased shall have belonged to a force not under any presidency, to the Controller General of Accounts at Calcutta.

*Sale of effects of Deserters.*

*Article* 179.—The effects in camp or quarters of a deserter shall be publicly sold, and the proceeds, after payment thereout of all regimental or departmental claims, shall be remitted by the officer commanding, or in charge of,

the regiment, corps, detachment or department to which the deserter belongs, to the Controller General of Accounts at Calcutta, or to the Accountant General to the Government of Fort St. George or of Bombay.

*Remittal of proceeds.*

If the deserter belongs to a force not attached to any presidency, then the said proceeds shall be remitted to the Controller General of Accounts at Calcutta.

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## PART III.—MISCELLANEOUS.

*Prohibition of Second Trial.*

(*a*).—Persons subject to the Articles contained in Part II of this Act, who have been acquitted or convicted, either by a Court-martial or by a Court of criminal justice, of any offence, whether military or non-military, shall not be again tried or punished for the same offence by any Court whatsoever.

But any such person may be dismissed the service.

*Prohibition of Arrest for Debt.*

(*b*).—No person attested under this Act or any previous Articles of War for Her Majesty's Indian Army, shall, so long as he belongs to such army, be liable to be arrested for debt under any process issued by, or by the authority of, any Court of law.

The Judge of any such Court may examine into any complaint made by such person or his superior officer, of the arrest of such person contrary to the intent of this Act, and may by warrant under his hand discharge such person, and shall award reasonable costs to the complainant, who may recover such costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining such process.

The arms, horse, clothes, equipments, regimental accoutrements and necessaries of any such attested person shall not be seized, nor shall his pay and allowances or any part thereof be attached, in satisfaction of any judgment against him or any person whom he may represent.

*Breach of Cantonment Rules.*

(*c*).—When any offence in breach of any duly authorized cantonment rule or regulation is committed by any person not subject to the said Articles, and not an European British subject or an officer or soldier, the officer commanding the cantonment may, where there is no Cantonment Magistrate, summon or order the apprehension of the offender; and such officer may (after personally investigating the case) sentence the offender to pay a fine not exceeding

fifty rupees; or in default of payment of, or in lieu of, such fine, to imprisonment in any jail or military guard for a period not exceeding thirty days.

The officer in charge of any jail shall, on the delivery to him of the person of the offender, with a warrant under the hand of the said commanding officer, detain the offender according to the exigency of the warrant, or until he is discharged by due course of law.

*Capture of Deserters.*

(*d*).—Whenever any person subject to the said Articles deserts, the commanding officer of the regiment, corps or detachment to which he belongs, shall give written information of the desertion to such civil, political or police authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter, in like manner as if he were a person for whose capture a warrant had been issued by a Magistrate, and shall deliver the deserter when apprehended to military custody.

Such authorities shall also, by such means as appear to them best adapted for the purpose, prevent persons reasonably suspected to be subject to the said Articles from travelling through the districts subject to their jurisdiction, unless on duty, or furnished with a certificate of leave or discharge.

Any police-officer may arrest, without warrant, any person so suspected, and shall bring him without delay before the nearest Magistrate, or the nearest military commanding officer when no Magistrate is readily accessible, to be dealt with according to law.

*Apprehension of Military Offenders.*

(*e*).—Whenever any person subject to the said Articles, who is accused of any military offence, is within the jurisdiction of any civil, political or police officer, such officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect, signed by his commanding officer.

*Presumption as to signatures.*

(*f*).—In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the civil or military service of Government shall, on production, be presumed to have been duly signed by the person and in the character by whom and in which it purports to have been signed, until the contrary is shown.

*Native Troops serving out of their own Presidency.*

(*g*).—When any portion of the Native troops belonging to any presidency is serving within the limits of any other presidency, such troops shall, during

such service, for all the purposes of the said Articles, be under the authority and orders of the Commander-in-Chief of the presidency in which they are serving:

Provided that it shall be lawful for the Governor General of India in Council to direct that, for the purposes of the said Articles, Native troops serving out of their own presidency shall continue subject to the authority and orders of the Commander-in-Chief of the presidency to which such troops belong.

*Power to make Orders and issue Warrants.*

(*h*).—The Governor General of India in Council,

The Governors of Fort St. George and Bombay in Council,

The Commander-in-Chief of any presidency,

may respectively make all orders and issue all warrants for holding Courts-martial or otherwise, which appear necessary for the purposes of this Act; and in the case of military offences requiring to be disposed of without delay, the Governor General of India in Council, and the Governors of Fort St. George and Bombay in Council may respectively further authorize any officer empowered by Order in Council to confirm, commute, remit or annul sentences in such cases, to refer such sentences for orders to the Commander-in-Chief of the presidency.

*Limitation of Powers.*

(*i*).—Nothing hereinbefore contained shall empower the Commander-in-Chief of a presidency to re-admit to service or pension any person not within his command, or to authorize any officer to appoint, or to confirm, commute, remit or annul the sentences of Courts-martial for the trial of any person not within the command of such Commander-in-Chief, except in the case specified in the proviso in clause (*g*) of this Part,

or shall empower any Government to give directions as to the composition of, or to authorize the appointment of, Courts-martial in any place for the time being subject to any other Government.

Nothing in this Act shall be deemed to affect the authority conferred on the Commander-in-Chief in India by any Act of Parliament or by Royal warrant or commission.

*Power to make Rules.*

(*j*).—It shall be lawful for the Governor General of India in Council from time to time to make rules consistent with this Act, for the guidance of officers, whether military, civil or political, in all matters connected with its enforcement.

All such rules shall be published in the *Gazette of India*, and shall thereupon be deemed to have the force of law.

The Commander-in-Chief in India, as regards the presidency of Fort William and forces not attached to any presidency, may, with the previous sanction of the Governor General of India in Council, and the Commanders-in-Chief of the presidencies of Fort Saint George and Bombay, as regards their respective presidencies, may, with the previous sanction of the Local Government, from time to time substitute for the forms of affirmation given in Articles 109 and 111 as appropriate to Native officers and witnesses, such other forms as may be thought appropriate to Native officers and witnesses of any religion.

*Articles to be read periodically.*

*(k)*.—The following Articles, namely, Articles 3, 4, 5, 7 to 71, both inclusive, 90, 91, 92, 93, 94, 125, 126, 130, 131, 132, 133, 135, 136, 137, 138, 139, 154, 167 and 176, shall be read once in every three months at the head of every regiment, corps, troop or company in the service.

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## APPENDIX.

### PART I.—Definitions in the Indian Penal Code.

[See Part 1, Clause (*e*).]

*Wrongful gain.*

23. "Wrongful gain" is gain, by unlawful means, of property to which the person gaining is not legally entitled.

*Wrongful loss.*

"Wrongful loss" is the loss, by unlawful means, of property to which the person losing it is legally entitled.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

*Dishonestly.*

24. Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing "dishonestly."

*Fraudulently.*

25. A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.

*Reason to believe.*

26. A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing, but not otherwise.

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OF HURT.

*Hurt.*

319. Whoever causes bodily pain, disease, or infirmity to any person is said to cause hurt.

*Grievous hurt.*

320. The following kinds of hurt only are designated as "grievous":—

*First.*—Emasculation.

*Secondly.*—Permanent privation of the sight of either eye.

*Thirdly.*—Permanent privation of the hearing of either ear.

*Fourthly.*—Privation of any member or joint.

*Fifthly.*—Destruction or permanent impairing of the powers of any member or joint.

*Sixthly.*—Permanent disfiguration of the head or face.

*Seventhly.*—Fracture or dislocation of a bone or tooth.

*Eighthly.*—Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

*Voluntarily causing hurt.*

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

*Voluntarily causing grievous hurt.*

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause, or knows himself to be likely to cause, is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

*Explanation.*—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

*Illustration.*

A, intending, or knowing himself to be likely, permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days; A has voluntarily caused grievous hurt.

## Of Criminal Force and Assault.

### *Force.*

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling : Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described :

*First.*—By his own bodily power.

*Secondly.*—By disposing any substance in such a manner that the motion, or change, or cessation of motion takes place without any further act on his part, or on the part of any other person.

*Thirdly.*—By inducing any animal to move, to change its motion, or to cease to move.

### *Criminal Force.*

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause, injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

### *Illustrations.*

(*a*). Z is sitting in a moored boat on a river A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z ; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to Z, A has used criminal force to Z.

(*b*). Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z ; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, A has committed criminal force to Z.

(*c*). Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z ; and as A has acted thus intentionally without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(*d*). A intentionally pushes against Z in the street. Here A has, by his own bodily power, moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z, and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, he has used criminal force to Z.

(*e*). A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes, or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(*f*). A intentionally pulls up a woman's veil. Here A intentionally uses force to her; and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy her, he has used criminal force to her.

(*g*). Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally, by his own bodily power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling: A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.

(*h*). A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear, or annoyance to Z, he uses criminal force to Z.

*Assault.*

351. Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

*Explanation.*—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

*Illustrations.*

(*a*). A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(*b*). A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(*c*). A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances might not amount to an assault, the gesture explained by the words may amount to an assault.

*Theft.*

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

*Explanation* 1.—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

*Explanation* 2.—A moving, effected by the same act which effects the severance, may be a theft.

*Explanation* 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

*Explanation* 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

*Explanation* 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

*Illustrations.*

(*a*). A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession, without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(*b*). A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(*c*). A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(*d*). A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(*e*). Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(*f*). A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(*g*). A finds a ring lying on the high-road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(*h*). A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(*i*). A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(*j*). If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(*k*). Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he had borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(*l*). A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z, as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(*m*). A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent, for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(*n*). A asks charity from Z's wife. She gives A money, food, and clothes, which A knows to belong to Z, her husband. Here, it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(*o*). A is the paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(*p*). A, in good faith believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

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## Of Extortion.

### *Extortion.*

383. Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion."

### *Illustrations.*

(*a*). A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(*b*). A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(*c*). A threatens to send club-men to plough up Z's field, unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(*d*). A by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper, and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

## II.—INDIAN PENAL CODE, CHAPTER V.

### Of Abetment.

Sections 107 and 108.

(See *Article* 71.)

*Abetment of a thing.*

107. A person abets the doing of a thing who—

*First,*—Instigates any person to do that thing; or,

*Secondly,*—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

*Thirdly,*—Intentionally aids, by any act or illegal omission, the doing of that thing.

*Explanation* 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

*Illustration.*

A, a public officer, is authorized by a warrant from a Court of justice to apprehend Z. B, knowing that fact, and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

*Explanation* 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

*Abettor.*

108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

*Explanation* 1.—The abetment of the illegal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act.

*Explanation* 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

*Illustrations.*

(*a*). A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(*b*). A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

*Explanation* 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

*Illustrations.*

(*a*). A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(*b*). A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act, and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(*c*). A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(*d*.) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

*Explanation* 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

*Illustration.*

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and as A instigated B to commit the offence, A is also liable to the same punishment.

*Explanation* 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

*Illustration.*

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section, and is liable to the punishment for murder.

# THE PRISONERS' TESTIMONY ACT, 1869.

CONTENTS.

Preamble.

PART I.—PRELIMINARY.

SECTION.

1. Short title.
2. Presidency Small Cause Courts.
   Police Magistrates.

PART II.—BRINGING UP PRISONERS.

3. Criminal Courts may make orders under Act.
4. Civil Courts may make orders under Act.
5. Court to countersign orders.
   Statement of facts necessitating order.
6. Order to be transmitted through Magistrate of District in which person is confined.
7. Order by High Court for removal of person confined more than 100 miles from place where his evidence is required.
8. Persons confined beyond limits of appellate jurisdiction of High Court.
9. Prisoner to be brought up.
10. Power to Government to exempt certain prisoners from operation of Act.
11. When jailor may disobey orders.

PART III.—COMMISSIONS.

12. Commission for examination of prisoners.
13. Commission for examination of prisoners beyond limits of appellate jurisdiction of High Court.
14. Commission how to be directed.

PART IV.—SERVICE OF PROCESS ON PRISONERS.

15. Process how served on prisoners.
16. Process served to be transmitted at prisoner's request.

PART V.—MISCELLANEOUS.

17. Deposit of costs.
18. Power to make rules.
19. Publication of rules.
20. Power to declare who shall be deemed 'officer in charge of jail.'
    Schedules of forms.

# ACT No. XV OF 1869.

*Received the Governor General's assent on the 4th June* 1869.

## An Act to provide facilities for obtaining the evidence and appearance of prisoners and for service of process upon them.[a]

WHEREAS it is expedient to provide facilities for obtaining the evidence and appearance in Court of prisoners and for service of process upon them; It is hereby enacted as follows:— Preamble.

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### PART I.—PRELIMINARY.

1. This Act may be called "The Prisoners' Testimony Act, 1869." Short title.

2. For the purposes of this Act, the Courts of Small Causes established within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay, and the Courts of persons exercising the powers of a Magistrate of Police within the same limits, shall be deemed to be respectively subordinate to the said High Courts. Presidency Small Cause Courts. Police Magistrates.

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### PART II.—BRINGING UP PRISONERS.

3. Any criminal Court not inferior to the Court of a subordinate Magistrate of the first class may in its discretion, if it appear that the testimony of any person confined in any jail situate within the local limits of its appellate jurisdiction, if the criminal Court be a High Court, or, if it be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter depending in such criminal Court, or if a charge of an offence against such person is made or pending, make an order in the form in schedule A or schedule B (as the case may be) to this Act annexed, directed to the officer in charge of the said jail. Criminal Courts may make orders under Act.

4. Any civil Court may in its discretion, if it appear that the testimony of any person confined in any jail situate within the local limits of its appellate jurisdiction, if the civil Court be a High Court, or, if it be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter depending in such civil Court, make an order in the form in the said schedule A, directed to the officer in charge of the said jail. Civil Courts may make orders under Act.

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[a] Declared to apply to the whole of British India, except the Scheduled Districts, Act No. XV of 1874.

Court to countersign orders.

5. When such order is made in any civil matter pending in a Court subordinate to the Court of the District Judge, or in any Court of Small Causes situate outside the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William in Bengal, Madras and Bombay, it shall not be forwarded to the officer to whom it is directed, or acted upon by him, until the same shall have been submitted to, and countersigned by, such Judge, or the District Judge within the local limits of whose jurisdiction such Court of Small Causes is situate.

Statement of facts necessitating order.

Every order so submitted shall be accompanied by a statement under the hand of the Judge of the facts which in his opinion render such order necessary, and the District Judge may, after considering such statement, decline to countersign the order.

Order to be transmitted through Magistrate of district in which person is confined.

6. When any person for whose attendance an order as hereinbefore mentioned shall be made is confined in any district other than that in which the Court making or countersigning the order is situate, the order shall be sent by the Court by which it shall have been made or countersigned to the Magistrate of the district or division of a district in which the said person is confined, and such Magistrate shall cause it to be delivered to the officer in charge of the jail in which such person is confined.

Order by High Court for removal of person confined more than 100 miles from place where his evidence is required.

7. In any case in which a person is confined in a jail within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature at Fort William, Madras and Bombay, or in a jail more than one hundred miles distant from the place where any Court, subordinate to a High Court, in which his evidence is required, is held, the Judge or presiding officer of the Court in which the evidence is so required shall, if he think it expedient that such person should be removed under this Act for the purpose of giving evidence in such Court, and if the said jail is situate within the local limits of the appellate jurisdiction of the High Court to which such Court is subordinate, apply in writing to the same High Court, and such High Court may, if it think fit, make an order in the form in the said schedule A, directed to the officer in charge of the said jail.

The High Court making the order shall send it to the Magistrate of the district or division of a district in which the person named therein is confined, and such Magistrate shall cause the order to be delivered to the officer in charge of the jail in which such person is confined.

For the purposes of this Act, every jail in British Burma shall be deemed to be situate within the local limits of the appellate jurisdiction of the Judicial Commissioner; and the Recorder of Rangoon may issue orders under this

section or sections three or four, and may also issue commissions under Part III of this Act, in any jail in British Burma.[a]

Persons confined beyond limits of appellate jurisdiction of High Court.

8. In any case in which a person is confined within a jail situate beyond the local limits of the appellate jurisdiction of a High Court, any Judge of such Court may, if he think it expedient that such person should be removed under this Act, for the purpose of giving evidence in any criminal matter in such Court or in any Court subordinate thereto, apply in writing to the Local Government within the territories subject to which the said jail is situate; and such Government may, if it think fit, direct that such person shall be so removed, subject to such rules regulating the escort of such prisoners as the Governor General of India in Council may from time to time prescribe.

To obtain the removal of a person confined in a jail situate beyond the territories for the time being under the administration of the Chief Commissioner of British Burma for the purpose of giving evidence in any criminal matter in the Court of a Recorder, such Recorder shall have the power conferred on a Judge of a High Court by the former part of this section, and the other provisions of such part shall, *mutatis mutandis*, apply.

Prisoner to be brought up.

9. Upon delivery of any order under this Act to the officer in charge of the jail in which the person named therein is confined, such officer shall cause him to be taken to the Court in which his attendance is required, so as to be present in such Court at the time in such order mentioned; and shall cause him to be detained in custody in or near the Court until he shall have been examined or until the Judge or presiding officer of such Court shall authorize him to be taken back to the jail in which he was confined.

Power to Government to exempt certain prisoners from operation of Act.

10. The Governor General of India in Council or the Local Government may, from time to time, by notification in the official Gazette,[b] direct that any person or any class of persons shall not be removed from the jail in which he or they may be confined; and thereupon, and so long as such notification remains in force, the provisions of this Act, other than those contained in sections twelve, thirteen and fourteen, shall not apply to such person or class of persons.

When jailor may disobey orders.

11. When any person named in any order made under section three, section four, or section seven appears to be from sickness or other infirmity unfit to be removed, the officer in charge of the jail in which he is confined shall apply to the Magistrate of the district or division of a district in which

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[a] See Act No. XVII of 1875, sec. 93.

[b] See *British Burma Gazette*, June 19th, 1875, Part II, p. 107.

such jail is situate, and if such Magistrate shall by writing under his hand declare himself to be of opinion that such person is from infirmity unfit to be removed;

or when any person named in any such order is under committal for trial;

or under a remand pending trial or pending a preliminary investigation;

or when any such person is in custody for a period which would expire before the expiration of the time required for removing him under this Act and for taking him back to the jail in which he is confined;

then and in every such case the officer in charge of the jail shall abstain from obeying such order, and shall send to the Court from which the order has been issued, a statement of his reason for not obeying the same:

Provided that the said officer shall not so abstain when the order has been made under section three, and the person named in the order is confined under committal for trial or under a remand pending trial or pending a preliminary investigation, and does not appear to be from sickness or other infirmity unfit to be removed, and the place where his evidence is required is not more than five miles distant from the jail in which he is confined.

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## PART III.—Commissions.

Commission for examination of prisoners.

**12.** Whenever it shall appear to any civil Court that the evidence of a person confined in any jail situate within the local limits of the appellate jurisdiction of such Court, if it be a High Court, or if it be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, who for any of the causes mentioned in section ten or section eleven cannot be brought up before it, is material in any matter depending before such Court,

and whenever it shall appear to any such Court that the evidence of a person confined in any jail so situate and more than ten miles distant from the place at which such Court is held, is material in any such matter,

and in any case in which the District Judge shall under section five have declined to countersign the order for removal,

the Court may, if it think fit, issue a commission under the provisions of the Code of Civil Procedure for the examination of such person in the jail in which he is confined.

Commission for examination of prisoners beyond limits of appellate jurisdic-

**13.** Whenever it shall appear to any High Court that the evidence of a person confined in a jail situate beyond the local limits of its appellate jurisdiction is material in any civil matter depending before such Court, or before any Court subordinate thereto, the High Court may, if it think fit, issue

a commission under the provisions of the Code of Civil Procedure for the examination of such person in the jail in which he is confined. tion of High Court.

**14.** Every commission issued under section twelve or section thirteen shall be directed to the district Court of the district wherein the jail in which such person is confined is situate, and such Court shall commit the execution of the commission to the officer in charge of such jail, or to such other person as the Court thinks fit. Commission how to be directed.

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## PART IV.—Service of Process on Prisoners.

**15.** When any process directed to any person confined in any jail is issued from any Court, the same may be served by exhibiting to the officer in charge of such jail or prison the original of such process, and by depositing with him a copy thereof. Process how served on prisoners.

**16.** Every officer in charge of a jail upon whom any such service as is mentioned in section fifteen shall be made, shall, as soon as may be, cause the copy of the process so deposited with him to be shown and explained to the prisoner to whom it is directed, and shall thereupon endorse upon such process a certificate signed by him that the prisoner to whom the process is directed is a prisoner in the jail under his charge, and that he has received a copy thereof. Process served to be transmitted at prisoner's request.

Such certificate shall be sufficient *primâ facie* evidence of the service of such process; and if the prisoner requests that the said copy be sent to any other person, and provides the cost of so sending it, the said officer shall cause the same to be so sent through the Post-office by registered letter.

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## PART V.—Miscellaneous.

**17.** No order in any civil matter shall be made by a Court under any of the provisions hereinbefore contained until the amount of the costs and charges of the execution of such order (to be determined by the Court) is deposited in such Court: Deposit of costs.

Provided that, if upon any application for such order it appear to the Court to which the application is made that the applicant has not sufficient means to meet the said costs and charges, the Court may pay the same out of any fund applicable to the contingent expenses of such Court, and every sum so expended may be recovered by Government from any person ordered by the Court to pay the same, as if it were costs of suit recoverable under the Code of Civil Procedure.

Power to make rules.

**18.** It shall be lawful for the Local Government, and in cases arising under section eight, for the Governor General of India in Council, to make rules[a] consistent with this Act

(1) for regulating the escort of prisoners to and from the Court in which their presence is required;

(2) for regulating the amount to be allowed for the costs and charges of such escort; and

(3) for the guidance of officers in all other matters connected with the enforcement of this Act;

and from time to time to alter and add to the rules so made.

Publication of rules.

**19.** All such rules, alterations and additions shall be published in the official Gazette, and shall, from the date of such publication, be deemed to have the force of law.

Power to declare who shall be deemed officer in charge of jail.

**20.** The Local Government may also declare in each case what officer shall, for the purposes of this Act, be deemed to be 'the officer in charge of the jail.'

## SCHEDULE A.

Court of

To the officer in charge of the *(state name of jail)*

You are hereby required to have the body of , now a prisoner in under safe and sure conduct before the at on the day of next by of the clock in the forenoon of the same day, there to give testimony in a cause now pending before [*or* in a certain charge or prosecution now pending before against *or as the case may be*] and after the said shall then and there have given his testimony before the said or the said shall dispense with his further attendance, cause him to be conveyed under safe and sure conduct back to the said jail.

day of . *A. B.*

(*Countersigned*) *C. D.*

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[a] Rules by the Governor General in Council, under this section and section 10, for giving effect to the Prisoners' Testimony Act, 1869, in British Burma—Home Department Notification, No. 544, dated 24th March 1870, *Gazette of India*, 26th March 1870, Part I, p. 202.

Ditto, in the Central Provinces—*Ibid.*, No. 1306, dated 7th September 1869, *Gazette of India*, 11th September 1869, Part I, p. 261.

Ditto, in the Panjáb—*Ibid.*, No. 1389, dated 21st September 1869, *Gazette of India*, 25th September 1869, p. 300.

Ditto, in Coorg—*Ibid.*, No. 1391, dated *idem*, *Gazette of India*, 25th September 1869, p. 301.

Ditto, in the North-Western Provinces—*Ibid.*, No. 1539, dated 13th October 1869, *Gazette of India*, 16th October 1869, p. 386.

Ditto, in Oudh—*Ibid.*, No. 1725, dated 30th November 1869, *Gazette of India*, 4th December 1869, p. 490.

Ditto, in the Haidarábád Assigned Districts—*Ibid.*, No. 1814, dated 15th December 1869, *Gazette of India*, 18th December 1869, p. 530.

Rules made by the Lieutenant Governor of Bengal under this section — Bengal Government Circular 6, dated 11th January 1870, *Calcutta Gazette*, 12th January 1870, p. 35.

SCHEDULE B.

Court of

To the officer in charge of the *(state name of jail)*

You are hereby required to have the body of , now a prisoner in under safe and sure conduct before the at on the day of next by of the clock in the forenoon of the same day, there to answer a charge now pending before and, after such charge shall have been disposed of or the said shall dispense with his further attendance, cause him to be conveyed under safe and sure conduct back to the said jail.

day of *A. B.*

(*Countersigned*) *C. D.*

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## ACT No. XVII OF 1869.

*Received the Governor General's assent on the* 11*th August* 1869.

## An Act to shorten the time for landing Cargo.

WHEREAS the Consolidated Customs Act (No. VI of 1863), section fifty-two, provides that if the importer, owner or consignee of any goods (except as therein excepted), or his agent, shall not land such goods within fifteen working days after the entry of the vessel importing the same, or within such further period as the bill of lading of such vessel shall specify, the master or commander of the vessel, or the officers of customs on his application, may then carry such goods to the custom-house; And whereas it is expedient to shorten the period of fifteen working days, so limited; It is hereby enacted as follows:— Preamble.

1. Sections 52, 53 and 54 of the said Act are hereby repealed, and in lieu thereof the following shall be substituted:— New sections substituted for 52—54, Act VI of 1863.

52. [ *See above, p.* 577. ]

53. [ *See above, p.* 577. ]

54. [ *See above, pp.* 577—578. ]

2. This Act shall be read with and taken as part of the Consolidated Customs Act. Act to be read with Act VI of 1863.

# THE GENERAL STAMP ACT, 1869.

## CONTENTS.

### CHAPTER I.—Preliminary.

Section.
1. Short title.
Extent of Act.
Commencement of Act.
2. [*Repealed.*]
3. Interpretation-clause.

### CHAPTER II.—Stamp-duties chargeable under this Act.

4. Scheduled duties chargeable.
5. Duties how levied.
(*a.*) By adhesive stamps.
(*b.*) By impressed stamps.
6. Duties by whom payable.
7. Duties on bills of exchange.
8. Bills drawn out of British India.
9. Instruments reserving interest.
10. Consideration expressed in foreign currency.
11. Optional stamps where value of subject-matter is indeterminate.
12. Bond, &c., for payment of annuity.
Consideration an annuity.
13. Several instruments used in a single transaction.
14. Instruments coming within two or more of the definitions in section 3.
15. Instruments exempt from duty.
16. Power to lower rates of stamp-duty.
17. Saving of judicial stamp-duties.

### CHAPTER III.—Unstamped or insufficiently stamped Documents.

18. (*a.*) Instruments not duly stamped inadmissible in evidence.
(*b.*) Except in criminal proceedings.
19. Foreign bill unstamped or with stamp uncancelled.
20. Powers of civil Courts as to unstamped or insufficiently stamped instruments.
Penalty.
21. (*a.*) Registration of payments and penalties levied by civil Courts.
(*b.*) Returns to Collector.
(*c.*) Payments to Collector.

SECTION.

22. Impounding unstamped instruments in civil or criminal Courts.
23. Impounding unstamped instruments in public office.
24. (*a.*) Powers of Collector as to unstamped or insufficiently stamped instruments.
Prosecution.
(*b.*) Remission of penalty.
25. Validity of instrument for which Collector levies penalty.
Loss of instruments sent under sections 22, 23, 24 or 25.
26. Power to stamp instruments chargeable with one anna.
27. (*a.*) Procedure where receipts are required.
(*b.*) Refusal to give receipts.
28. After-stamping when inadmissible.

## CHAPTER IV.—CRIMINAL PENALTIES.

29. Penalty for executing instrument on paper not duly stamped.
30. Penalty for presenting, &c., unstamped foreign bills or notes.
31. Cancelling stamps on foreign bills by holder.
Penalty for failure to cancel such stamps.
32. Penalty for not drawing full number of bills or marine policies purporting to be in sets.
33. Cancellation of adhesive stamp by maker or executant.
Penalty for failure to cancel such stamps.
34. (*a*). Consideration to be stated.
(*b.*) Mortgage-money to be deemed purchase-money.
(*c.*) Penalty for not stating consideration.
35. Penalty on attorneys, &c., not inserting true consideration.
36. Abetment.
37. Recovery of fines.
38. Reward to informers.

## CHAPTER V.—JURISDICTION.

39. Adjudication of doubt as to proper stamp.
40. Revision of Collector's certificates and orders.
41. Reference to High Court.
42. Power to remit penalties.
43. Institution and conduct of prosecutions.
44. Jurisdiction of Magistrate.

## CHAPTER VI.—MISCELLANEOUS.

45. Refund in case of useless or spoiled stamped paper.
46. When stamped paper shall be held to be spoiled.
47. Suit where consideration is not stated.

SECTION.

48. Power to make rules for sale of stamps.
Approval and publication of rules.
Penalty for disobeying rules.
49. Employment of single impressed stamp.
50. Employment of several stamped papers.
51. Act to be translated, indexed and sold cheaply.

## SCHEDULES.

SCHEDULE I.—Instruments chargeable with *ad valorem* stamp-duties.
" II.—Instruments chargeable with fixed stamp-duties.
" III.—Enactments repealed by section 2.

## ACT No. XVIII OF 1869.

*Received the Governor General's assent on the 13th August* 1869.

## An Act for imposing Stamp Duties on certain Instruments.

### CHAPTER I.—PRELIMINARY.

Short title

1. This Act may be called 'The General Stamp Act, 1869.'

Extent of Act.

It extends to the whole of British India.

Commencement of Act.

And it shall come into force on the first day of January 1870.

2. [*Repealed by Act No. XIV of* 1870.]

Interpretation clause.

3. In this Act and the first and second schedules hereto annexed, unless there be something repugnant in the subject or context—

(1.) 'Affidavit' includes every declaration in writing, on oath or affirmation, made before a person authorized by law to administer an oath:

(2.) 'Award' includes every decision in writing by an arbitrator or umpire:

(3.) 'Bill of Exchange' includes a hundí and every other instrument (except a cheque) whereby a person is ordered to pay to another a specified sum of money:

(4.) 'Bill of Lading' includes every instrument signed by the owner of a ship or his agent, acknowledging the receipt of goods therein described, and undertaking to deliver them at a port and to a person therein mentioned or indicated:

(5.) 'Bond' includes every instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be:

(6.) 'Bottomry-bond' includes every instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to prosecute her voyage:

(7.) 'Charter-party' includes every instrument (except an agreement for the hire of a tug-steamer) whereby a ship or some principal part thereof is let for the specified purposes of the charterer:

(8.) 'Cheque' includes every instrument whereby a bank, banker, or person acting as a banker is ordered to pay on demand a specified sum of money:

(9) 'Collector' means, within the limits of the towns of Calcutta, Madras and Bonbay, the Collector of Calcutta, Madras or Bombay, and, without those limits, the Collector of a District, and includes Deputy Commissioner or any officer having jurisdiction equivalent to that of a Collector of a District:

(10) 'Composition-deed' includes every instrument executed by a debtor, whereby the debtor conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license, for the benefit of his creditors:

(11) 'Conveyance' means any instrument (except a transfer of a share in a company or association, a mortgage-deed, a settlement, a lease, an instrument of re-conveyance of mortgaged property, a composition-deed, an instrument of gift, or an instrument of exchange or partition-deed, where no money is paid for equality of exchange or partition) by which property[a] is conveyed *inter vivos*:

(12) 'Counterpart' means the duplicate of a conveyance, settlement, mortgage-deed or lease, such duplicate not being executed by the grantor, settlor, mortgagor or lessor, but by some other party to the instrument; it includes a kabúliyat in cases where a lease has been granted:

(13) 'Dock-warrant' includes every instrument evidencing the title of any person therein named or his assign, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the company or person in whose custody such goods may be:

(14) 'Impressed' includes 'printed' and 'lithographed.'

(15) 'Lease' includes every instrument (not being a counterpart) by which one person lets or agrees to let, or takes or agrees to take, immoveable property to or from another:

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[a] See *infra* cl. (26).

(16) 'Letter of credit' includes every instrument by which one person requests another to give credit to the person in whose favour it is drawn :

(17) 'Letter of license' includes every agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion :

(18) 'Mortgage-deed' includes every instrument evidencing a pledge of property for securing the payment of money :

(19) 'Negotiable instrument' includes bills of exchange, promissory notes and cheques :

(20) 'Notarial act' means any instrument, endorsement, note or entry made or signed by a Notary Public in the execution of the duties of his office, and includes every like instrument, endorsement, note or entry made or signed by a consul, attorney, or other person authorized by law to act as a Notary Public :

(21) 'Paper' includes vellum, parchment or any other material on which an instrument may be written :

(22) 'Partition-deed' means any instrument whereby persons interested in immoveable property jointly, or in common, or as co-parceners, or as members of an undivided Hindú family, divide or agree to divide such property in severalty, and includes a batwárá :

(23) 'Policy of insurance' means any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage, or liability arising from an unknown or contingent event ; it does not include a policy on life :

(24) 'Power-of-attorney' includes every instrument (except a proxy) empowering a person to act in the stead of the person executing it :

(25) 'Promissory note' includes every instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight :

(26) 'Property' means property being in British India[a]:

(27) 'Protest' means a declaration in writing made by a Notary Public, or other person authorized to act as such, attesting the dishonour of a bill of exchange or promissory note :

(28) 'Protest of the master of a ship' includes every declaration of the particulars of her voyage, drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship :

[a] i. e. at the time of executing the document, 8 Bomb. O. C. J. 180.

(29) 'Proxy' means an instrument whereby a person authorizes another to vote for him at a meeting:

(30) 'Release' includes every instrument whereby a person renounces a claim upon another person or against any specified property:

(31) 'Respondentia-bond' includes every instrument securing a loan on the cargo laden or to be laden on board a ship, and making repayment contingent on the arrival of the cargo at the port of destination: and

(32) 'Settlement' means any instrument (other than a will) whereby the destination or devolution of moveable or immoveable property is settled or agreed to be settled.

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## CHAPTER II.—STAMP-DUTIES CHARGEABLE UNDER THIS ACT.

Scheduled duties chargeable.

**4.** For every instrument mentioned in the first and second schedules hereto, and executed in British India on or after the first day of January 1870,

or executed out of British India on or after that day, but relating to any property within British India,[a]

there shall be payable to the Government of India, as stamp-duty, the amount indicated in the first or second schedule hereto annexed, to be the proper duty for such instrument.

Duties how levied.

By adhesive stamps.

**5.** (*a*).—All instruments chargeable under this Act with the duty of one anna, bills of exchange and promissory notes drawn or made out of British India, and transfers by endorsement of shares of companies and associations, may (subject to the provisions hereinafter contained) be stamped with adhesive stamps.

By impressed stamps.

(*b*).—The stamp on every other instrument chargeable under this Act shall either be impressed on the paper whereon the instrument is written, or be otherwise denoted by the Collector or the Superintendent of Stamps in accordance with such rules as the Governor General of India in Council may from time to time prescribe in this behalf.[b]

Duties by whom payable.

**6.** In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne—

*1st*—In the case of any instrument mentioned in the first schedule to this Act (other than a policy of insurance, a mortgage-deed, a settlement, a conveyance, a lease, an instrument of exchange or partition-deed where money is paid for equality of exchange or partition, an appraisement or valuation, an award and a copy, duplicate or extract), by the person drawing, making, or executing such instrument:

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[a] See 7 Bomb. A. C. J. 140.

[b] See Financial Department Notifications No. 751, dated 28th January 1870, No. 2060, dated 23rd March 1870, No. 3115, dated 26th August 1870, No. 2329, dated 28th March 1872, cancelled by No. 2258, dated 23rd July 1875.

*2nd*—In the case of a policy of insurance, by the insured :

*3rd*—In the case of a settlement, by the settlor :

*4th*—In the case of a conveyance, mortgage-deed or lease, by the grantee, mortgagor or lessee :

*5th*—In the case of a counterpart of a lease, by the lessor :

*6th*—In the case of a partition-deed, by the parties thereto, in proportion to their respective shares in the property comprised therein : and

*7th*—In the case of an exchange where money is paid for equality of exchange, by the person paying such money.

Duties on bills of exchange.

7. The duty imposed by this Act on bills of exchange shall be chargeable (*a*) on all bills drawn and payable in British India, (*b*) on all bills drawn in, but payable out of, British India, and (*c*) on all bills drawn out of, but accepted, or paid, or endorsed, transferred, or otherwise negotiated within, British India.

Bills drawn out of British India.

8. The holder of any bill of exchange or promissory note drawn or made out of British India, and not stamped as required by this Act, shall, before he presents the same for acceptance or for payment, or endorses, transfers, or otherwise negotiates such bill or note, affix thereto the proper adhesive stamp or stamps for denoting the duty with which it is chargeable under this Act.

Instruments reserving interest.

9. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with a duty higher than that with which it would have been chargeable had no mention of interest been made therein.

Consideration expressed in foreign currency.

10. When the consideration set forth in or the amount secured by any instrument chargeable under this Act is expressed in pounds sterling, pounds currency, francs or dollars, such consideration or amount shall, for the purposes of this Act, be estimated according to the following scale :—

One pound sterling or pound currency is equivalent to ten rupees.

One hundred francs are equivalent to forty rupees.

One Mexican or China dollar is equivalent to two rupees four annas.

One Mauritius dollar is equivalent to two rupees.

Optional stamps where value of subject-matter is indeterminate.

11. When the amount or value of the subject-matter of any bond, mortgage-deed, or settlement chargeable under this Act with an *ad valorem* stamp-duty and referred to or mentioned in section six cannot be ascertained, the proper stamp to be borne by such instrument may be determined by the person bound under that section to bear the expense of providing the stamp :

Provided that, under such instrument, nothing shall be recoverable more than the highest amount or value for which, if stated in an instrument of the same denomination, the stamp actually used under such option would have been sufficient.

12. The whole amount secured for the payment of an annuity, or other sum payable periodically for an indefinite time by a bond, promissory note, or mortgage-deed shall, for the purposes of this Act, be deemed to be ten times the amount of the payment calculated for one year.

Bond, &c., for payment of annuity.

Where the consideration for a conveyance is an annuity or other sum payable periodically for an indefinite time, such consideration shall, for the purposes of this Act, be deemed to be ten times the amount of the payment calculated for one year.

Consideration an annuity.

13. Where more instruments than one are required for the completion of any transaction involving the execution of a mortgage-deed, settlement, conveyance, or lease, the proper stamp required by this Act for such mortgage-deed, settlement, conveyance, or lease shall be borne by the principal instrument executed in such transaction, and each of the other instruments shall bear a stamp of one rupee.

Several instruments used in a single transaction.

The parties may determine for themselves which of such instruments shall, for the purposes of this section, be deemed to be the principal instrument:

Provided that, where the instruments are liable to different rates of duty under this Act, the instrument liable to the highest of such rates shall be deemed to be the principal instrument.

14. An instrument so framed as to come within two or more of the definitions in section three shall, when the instruments to which those definitions apply are liable to different rates of duty under this Act, be charged with the highest of such rates:

Instruments coming within two or more of the definitions in section 3.

Provided that when any one instrument [a] purports, for distinct considerations, to convey by way of sale, to lease, to give, or to mortgage two or more subject-matters,

or to convey by way of sale, to lease, or to give one subject-matter and to mortgage another,

such instrument shall be chargeable with the aggregate amount of the duties to which instruments effecting separately each of such conveyances, leases, gifts, or mortgages would be liable under this Act. [b]

15. Nothing in this Act shall render the following instruments chargeable with duty:—

Instruments exempt from duty.

(1.) Receipt or discharge granted to a cultivator for the rent of land paying revenue to Government, or (in the Presidencies of Madras and Bombay) of inám lands.

(2.) Receipt given for money or securities for money deposited in any bank, or in the hands of any banker or person acting as a banker, to be accounted for:

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[a] *i.* one of the instruments with which the section professes to deal, 10 Bomb. 354.

[b] See 6 Bomb., A. C. J. 95.

Provided the same be not expressed to be received of or by the hands of any other than the person to whom the same is to be accounted for :

Provided further, that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share or in respect of a call upon any scrip or share of or in any company or association or proposed or intended company or association.

(3.) Receipt or discharge endorsed on or contained in any instrument duly stamped according to the law in force in British India at the date of its execution, acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal money, interest or annuity or other periodical payment, thereby secured.

(4.) Transfer by endorsement of a negotiable instrument or a policy of marine insurance or of insurance against fire.

(5.) Letters of hypothecation accompanying a bill of exchange.

(6.) Transfers of securities of the Government of India.

(7.) Bond to Government for the due performance of the duties of any salaried office.

(8.) Agreement or memorandum of an agreement for or relating to the sale of goods or merchandize.

(9.) Lease granted to a cultivator, unless a fine or premium be paid in consideration of such lease.

(10.) Counterpart of such lease.

(11.) Surrender of land executed by a cultivator to his landlord.

(12.) Affidavit made for the sole purpose of enabling any person to receive any pension or charitable allowance.

(13.) Copy of any paper which a public officer is by law required to make or furnish in his official capacity.

(14.) Copies made for the private use only of any person having the custody of the original instrument or of his counsel, attorney, or vakíl.

(15.) Receipt or other instrument executed by or on behalf of Government in cases where the Government would, but for this exemption, be liable to pay for the stamp thereon.

(16.) Letter of cover or engagement to issue a policy of insurance :

Provided that, unless such letter or engagement bear the stamp prescribed by this Act for such policy of insurance, nothing shall be recoverable thereunder, nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned.

Power to lower rates of stamp-duty.

**16.** The Governor General of India in Council may, from time to time, by order published in the *Gazette of India,* reduce or remit in the whole or any

part of British India the duties chargeable under this Act on all and any of the instruments mentioned in the first and second schedules hereto annexed, or on any particular class of such instruments, or on any of the instruments belonging to such class, or on any of the instruments mentioned in the said schedules when executed or granted by or to any particular class of persons, or by or to any members of such class,

and may, in like manner, cancel or vary such order to the extent of the powers hereby given.

Every such cancelment or variation shall be published in the *Gazette of India.*[a]

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[a] In exercise of this power the duties chargeable on the following instruments have been wholly remitted :—

Agreements made by the ryots in opium-producing districts for the cultivation of the poppy—No. 1228, dated 17th February 1870.

Bonds executed by Money Order Agents or their sureties for the due performance of their duties as such agents—No. 281, dated 11th June 1872.

Instruments executed in the Hill Tracts of Chittagong—No. 3764, dated 25th October 1872.

Certificates granted under section 259 of Act VIII of 1859, by which the right, title and interest in immoveable property sold in execution of a decree by a Civil Court are transferred to a purchaser, No. 3906, dated 24th October 1873.

Bonds executed for the purpose of guaranteeing that the local income from private subscriptions of a charitable hospital or dispensary shall not be less than a specified sum per mensem—No. 382, dated 16th January 1874.

Contracts for service in British Burma between Natives and the Chief Commissioner, No. 599, dated 23rd January 1874.

The following Receipts :—(*a*) Receipts for pay given by non-commissioned officers or soldiers of Her Majesty's Army or Her Majesty's Indian Army not being in civil employ ; (*b*) Receipts for pensions or allowances given by persons receiving pensions or allowances in respect of their services as such non-commissioned officers or soldiers and not being in civil employ ; and (*c*) Receipts given by holders of family certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned officer or soldier in either of the said Armies and is not in civil employ—No. 1101, dated 13th February 1874.

Instruments executed (before 30th November 1874) in favour of, by or on behalf of the Government relating to the carriage of grain to or in the territories under the respective Governments of the Lieutenant Governor of Bengal and the Lieutenant Governor of the North-Western Provinces—No. 1389, dated 26th February 1874.

Instruments relating to advances made by, or under the authority of, Government for the purchase of grain, or to ryots or cultivators (extends only to the Lower Provinces and the Benares Division)—No. 1401, dated 27th February 1874.

Instruments relating to land or benefits to arise out of land executed by members of certain tribes residing in Bannu District—No. 1739, dated 13th March 1874.

Instruments by which moveable or immoveable property is conveyed to the Secretary of State for India in Council by way of (*a*) sale, (*b*) lease, or (*c*) exchange where money is paid by Government for equality of exchange—No. 6046, dated 9th October 1874.

Affidavits made as a condition of enlistment under the Indian Articles of War—No. 7516, dated 31st December 1874.

Bonds executed by the sureties of middlemen (lambardárs or khattadárs) taking advances for the cultivation of the poppy within the limits of the Benares and Patna Opium Agencies—Financial Notification No. 503, dated 22nd January 1875.

Title-deeds (sanads) granted to Bhúmias in Ajmer—No. 1243, dated 4th June 1875.

Instruments executed by salaried officers of Government to secure the due performance of their duties—No. 2280, dated 23rd July 1875.

And the duties chargeable on the following instruments have been reduced :—

On a Release of any claim secured by a document chargeable with stamp-duty of less than Rs. 8. *Reduced to* the duty with which such document is chargeable—No. 2201, dated 2nd April 1874.

On a Release of any claim affecting any property when such claim is not secured by a document chargeable with stamp-duty, if the value of the property is expressed in the release and does

Saving of judicial stamp-duties.

17. Nothing in this chapter, or in the schedules hereto annexed, shall be deemed to affect the stamp-duties chargeable under any enactment relating to stamps used in judicial proceedings.

## CHAPTER III.—UNSTAMPED OR INSUFFICIENTLY STAMPED DOCUMENTS.

Instruments not duly stamped inadmissible in evidence.

18. (*a*).—No instrument chargeable with stamp-duty shall be received in any court of justice, or by any person having by law or consent of parties authority to receive evidence, as creating, modifying, transferring or extinguishing, or purporting to create, modify, transfer or extinguish, any right or obligation,

or as evidence in any civil proceeding,

or shall be acted upon in any such court, or by any such person as aforesaid, or by any public officer,

or shall be registered by any officer acting under any law for the registration of assurances or in any public office,

or shall be authenticated by any public officer,

unless such instrument bears a stamp of a value not less than the amount of the duty with which it is chargeable under the law in force in British India at the time of its execution.

Except in criminal proceedings.

(*b*).—Every instrument chargeable with stamp-duty shall be admitted in evidence in any criminal proceeding (other than proceedings under chapter XL[b] of the Code of Criminal Procedure), although it may not have the stamp required by law impressed thereon or affixed thereto.

Foreign bill unstamped or with stamp uncancelled.

19. Subject to the provisions contained in section twenty-six, no person taking a bill of exchange or promissory note requiring a stamp under section eight, either in payment or as a security, or by purchase or otherwise, shall be entitled to recover thereon, or to make the same available for any purpose, unless at the time when he so takes it the proper stamp is affixed thereto and cancelled in manner directed by this Act.

Powers of civil courts as to unstamp-

20. When any instrument chargeable with stamp-duty[c] executed on paper not bearing the stamp required by the law in force in British India at the

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not exceed Rs. 700. *Reduced to* the duty with which a conveyance of the property would be chargeable if the consideration for the conveyance equalled the value of the property expressed in the Release, *ibid.*

On instruments of exchange of immoveable property when no money is paid or agreed to be paid for equality of exchange. *Reduced to* four rupees—No. 5934, dated 30th September 1874.

On instruments of gift of immoveable property when the value thereof does not exceed Rs. 1,500. *Reduced to* the duty chargeable under Schedule I, on a conveyance the consideration money in which is the same as the value of the immoveable property given—No. 179, dated 16th April 1875.

On the counterpart of any instrument. *Reduced to* the duty chargeable on the instrument itself—No. 2255, dated 23rd July 1875.

[b] See Act No. X of 1872, section 2 and schedule V.

[c] 3 Mad. 72, 297 : 7 Mad. 363.

time of its execution is produced in a civil court, the court, if satisfied that the omission to execute such instrument on paper bearing the proper stamp did not arise out of any intention to evade payment of the proper duty, and on payment of such duty, or, in the case of an insufficiently stamped instrument, of the sum required to make up the full amount chargeable on such instrument,[a] ed or insufficiently stamped instruments.

together with a penalty of the following amount (that is to say) :—

if the instrument is produced within one year from the date of its execution, five times, or if it is produced after one year from such date, twenty times, such proper stamp-duty or deficient portion thereof as aforesaid, Penalty.

shall certify by endorsement on such instrument that the proper stamp-duty has been levied thereon :

Provided that no such penalty shall exceed one thousand rupees.

Such certificate shall be conclusive evidence as to the amount of stamp-duty leviable on such instrument, and the said instrument shall thereupon be admissible as if originally executed on paper bearing the proper stamp.

**21.** (*a*).—An entry of every such payment showing the amount thereof shall be made in a book to be kept by the court, and shall also be endorsed on the instrument in respect of which the payment is made, and such endorsement shall be signed by the presiding officer. Registration of payments and penalties levied by civil courts.

(*b*).—The court shall at the end of every month make a return to the Collector of the money (if any) which it has so received, distinguishing between the sums received by way of penalty and the sums received by way of duty, stating the number and title of the suit, the name of the party from whom the money was received, and the date (if any) and description of the instrument. Returns to Collector.

(*c*).—The court shall pay over all money so received to the Collector, or to such person as he may from time to time appoint to receive the same. Payments to Collector.

**22.** If it appear to a civil or criminal court that any instrument filed or exhibited in such court was executed on unstamped or insufficiently stamped paper with the intention of evading payment of the stamp-duty required by the law in force in British India at the time of its execution, the court may impound the instrument and send it to the Collector, and he shall thereupon prosecute the offender. Impounding unstamped instruments in civil or criminal courts.

**23.** When any instrument is produced before any registering officer, or in any public office other than a civil or criminal court, if it appear to the registering officer or to the head of such public office that the instrument is chargeable with stamp-duty under the law in force in British India at the time Impounding unstamped instruments in public office.

[a] 10 Bomb. 408.

of its execution, but that it does not bear a stamp of a value equal to or exceeding the value of the stamp prescribed therefor by that law, he shall impound the instrument, and send it forthwith to the Collector.

Powers of Collector as to unstamped or insufficiently stamped instruments.

24. (*a*).—When any instrument[a] is produced before the Collector, otherwise than for the purpose of obtaining an adjudication under section thirty-nine, or has been sent to him under section twenty-three, he shall either proceed in accordance with the provisions of section twenty, exercising the powers thereby conferred on a civil court; or, if it appear to him that the instrument was executed on unstamped or insufficiently stamped paper with the intention of evading payment of the proper stamp-duty, he shall prosecute all the persons that have executed the said instrument, or such of them as to him may seem fit;

Prosecution.

or if it appear to him that the instrument is properly stamped, or that it is not chargeable with stamp-duty under the law in force in British India at the time of its execution, he shall certify by endorsement thereon that it is properly stamped, or that it is not so chargeable (as the case may be); and he shall thereupon return such instrument to the registering or other public officer by whom it was sent, or to the person by whom it was produced, and, subject to the provision contained in section forty, it shall be deemed to be properly stamped or not chargeable (as the case may be):

Remission of penalty.

(*b*.)—Provided that, in any case coming under this section, if the instrument is brought within one year from the date of its execution to the Collector, or other public officer by whom it has been sent to the Collector under section twenty-three, and if the Collector is satisfied that such instrument has not been duly stamped previously to being signed or executed by reason of accident, mistake, inadvertence or urgent necessity, he may remit the whole or any part of the penalty prescribed by section twenty:

(*c*).—Provided also that, in any case coming under this section in which an instrument, other than a bill of exchange or promissory note, purports to have been executed out of British India, if the Collector is satisfied that the instrument was so executed, and also that it has been brought to him within the three months next after its arrival in British India, he shall, on payment of the duty with which such instrument would have been chargeable if executed in British India, certify by endorsement thereon that the proper stamp-duty has been levied upon it.

(*d*).—Subject to the provision contained in section forty, such certificate shall be conclusive evidence of the amount of stamp-duty leviable on the

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[a] 7 Mad. 363.

instrument, which shall thereupon be admissible as if originally executed on paper bearing the proper stamp.

**25.** When the Collector elects to proceed under section twenty, he shall (if he imposes a penalty), after endorsing on the instrument the certificate thereby directed, or (if he remits the whole of the penalty) after endorsing on the instrument a certificate to that effect, return such instrument to the registering or other public officer by whom it was sent or to the person by whom it was produced.

Validity of instrument for which Collector levies penalty.

Subject to the provision contained in section forty, the said instrument shall thereupon be, and be deemed to have been, as valid as if it was originally executed on paper bearing the proper stamp.

In case any instrument sent or returned under sections twenty-two, twenty-three, or twenty-four, or the former part of this section, be lost, destroyed or injured during transmission, the court or officer sending or returning the same shall not be liable for such loss, destruction or injury.

Loss of instruments sent under sections 22, 23, 24 or 25.

**26.** (*a*).—When any bill of exchange, promissory note, cheque or order for the payment of money on demand by any banker or person acting as a banker, chargeable hereunder with the duty of one anna, comes to his hands unstamped, he may affix thereto the necessary adhesive stamp, and cancel the same in the manner required by this Act, and upon so doing, may charge the duty against the person who ought to have paid the same, or deduct such duty from the sum so directed to be paid.

Power to stamp instruments chargeable with anna.

(*b*).—Such bill, note, cheque or order shall, so far as relates to the stamp-duty chargeable thereon, be valid; but this shall not relieve any person or firm from liability to the penalty which he or it may have incurred by issuing or giving the said bill, note, cheque or order unstamped.

**27.** (*a*).—Any person, or the agent of any person, from whom money exceeding in amount twenty rupees is due or claimed to be due, and who shall have paid such money, may provide a piece of paper with an adhesive stamp of one anna affixed thereto, and may require of the person entitled to such money, or any agent to whom the same shall have been paid, a receipt for such money and also the value of the said stamp.

Procedure where receipts are required.

(*b*).—If any one to whom money shall have been so paid refuses to give such receipt upon demand thereof, or to pay the value of the said stamp thereon, he shall be liable for every such offence to a fine not exceeding one hundred rupees.

Refusal to give receipts.

**28.** Except as provided in sections eight and twenty-six, no stamp shall be affixed to, or impressed on, any bill of exchange, or promissory note, or any

After-stamping when inadmissible.

instrument chargeable hereunder with the duty of one anna,[a] subsequent to the execution thereof; nor shall the provisions of sections twenty and twenty-four apply to any such instrument.

## CHAPTER IV.— CRIMINAL PENALTIES.

Penalty for executing instrument on paper not duly stamped

**29.** Any person or firm making, signing or issuing, or, except as provided in section twenty-six, accepting, endorsing, paying or receiving payment of, any bill of exchange, promissory note, cheque or other similar instrument liable to any of the duties hereby imposed, without the same being duly stamped,

and any person making, executing, or signing, otherwise than as a witness,[b] any other instrument liable to any of such duties without the same being duly stamped,

shall, for every such offence, be liable to fine not exceeding one hundred rupees,

or, if ten times the value of the proper stamp exceeds one hundred rupees, to fine not exceeding ten times such value,

or, where an insufficient stamp has been used, if ten times the deficient amount exceeds one hundred rupees, to fine not exceeding ten times such amount:

Penalty for presenting, &c., unstamped foreign bills or notes.

**30.** Any person or firm presenting for acceptance or for payment, or accepting, paying, endorsing, transferring or in any manner negotiating, any bill of exchange or promissory note drawn or made out of British India whereon there is not such stamp as is required by this Act, shall be liable for every such offence to fine not exceeding one hundred rupees.[c]

Cancelling stamps on foreign bills by holder.

**31.** Any person or firm presenting for acceptance or payment a bill of exchange or promissory note to which an adhesive stamp has been affixed under section eight,

and any person or firm endorsing, transferring, or in any manner negotiating such bill or note,

shall, before delivering the same out of his or its hands, custody, or power cancel the stamp so affixed, in such manner as to show that the stamp has been made use of, and so that the same shaall not admit of being used again.

Penalty for failure to cancel such stamps.

Any person or firm who or which ought, as directed by this Act, to cancel such stamp in manner aforesaid, and refusing or neglecting so to do, shall be liable for every such offence to fine not exceeding one hundred rupees.

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[a] 7 Mad. 363.

[b] 3 Mad. Rulings xxvii. 6 Mad Rulings v.

**32.** Any person or firm drawing or executing within British India a bill of exchange or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped as required by this Act the whole number of bills or policies of which such bill or policy purports the set to consist, shall, for every such offence, be liable to fine not exceeding one thousand rupees.

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

**33.** Whenever an adhesive stamp is used as hereinbefore authorized, the person making or executing the instrument to which such stamp is affixed shall, before delivering the instrument out of his hands, custody or power, cancel the stamp so used, so that it cannot be used again.

Cancellation of adhesive stamp by maker or executant.

Any person making or executing such instrument and failing to cancel the stamp affixed thereto in manner aforesaid shall, for every such offence, be liable to fine not exceeding one hundred rupees.

Penalty for failure to cancel such stamps.

**34.** (*a*).—When any moveable or immoveable property is sold, the full consideration-money directly or indirectly paid or secured, or agreed to be paid or secured, for the same, shall be truly set forth in words at length in the principal or only instrument whereby the property sold is conveyed to, or vested in, the purchaser or in any other person by his direction.

Consideration to be stated.

(*b*).—When any property is sold and conveyed subject to any mortgage or bond or other debt, or to any gross or entire sum of money, such debt or sum shall be deemed the consideration-money or part of the consideration-money (as the case may be) in respect whereof the duty chargeable under the first schedule to this Act shall be paid, notwithstanding the purchaser is not or does not become personally liable for such debt or sum, or does not agree to pay the same or to indemnify the seller against the same.

Mortgage-money to be deemed purchase-money.

(*c*).—If the full consideration-money is not set forth as aforesaid, the purchaser and the seller shall each be liable to fine not exceeding five hundred rupees, and shall also pay a fine of five times the amount of the excess of duty with which such instrument would have been chargeable under this Act if the full-consideration money had been duly set forth in such instrument, in addition to the duty actually paid for the same.

Penalty for not stating consideration.

**35.** Any attorney, vakíl, pleader, mukhtár or other person employed in or about the preparing of any instrument in or upon which the full consideration-money is hereby required to be truly set forth, or employed for any of the parties thereto in anywise about or relating to the transaction therein mentioned, who knowingly inserts or sets forth, or causes to be inserted or set forth, in or upon any such instrument any other than the full consideration-money, shall for every such offence, pay a fine of not less than five hundred rupees and not exceeding five thousand rupees.

Penalty on attorneys, &c., not inserting true consideration.

Every attorney, vakíl, pleader and mukhtár convicted under this section shall, from the date of such conviction, be disabled to practice as an attorney, vúkíl, pleader or mukhtár:

Provided that no person shall be liable to any penalty or disability under this section, unless the duty actually paid for the instrument is less than would have been payable for the same in case the consideration-money had been truly set forth as aforesaid.

Abetment.

**36.** Whoever abets within the meaning of the Indian Penal Code any offence made punishable by this Act shall be punished with the punishment hereinbefore provided for such offence.

Recovery of fines.

**37.** All fines imposed under this Act may be recovered, if for offences committed outside the local limits of towns of the Calcutta, Madras, and Bombay, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act regulating the Police of such towns in force for the time being.

In the case of a firm, the Magistrate imposing the fine may issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the firm, or to all or any of the members thereof.

Reward to informers.

**38.** Whenever an offender is sentenced to pay a fine under this Act, the convicting Magistrate may award any portion not exceeding one-half to the person on whose information the offender has been convicted.

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## CHAPTER V.—Jurisdiction.

Adjudication of doubt as to proper stamp.

**39.** When any instrument chargeable with stamp-duty under this Act, whether previously stamped or not, is brought to the Collector, and the person bringing it desires to have the opinion of that officer as to the duty with which it is so chargeable, and pays a fee of five rupees, the Collector shall assess and charge the duty to which, in his judgment, the instrument is liable; and upon payment of such duty or of such a sum as, with the duty already paid thereon, is equal to the duty so assessed and charged, and of the penalty, if any, incurred through the instrument having been executed on insufficiently stamped paper, shall certify by endorsement on such instrument that the full duty with which it is chargeable under this Act has been paid.

The instrument shall thereupon be deemed to be duly stamped and shall be receivable in evidence or otherwise in all courts and public offices as if originally executed on paper bearing the proper stamp:

Provided that nothing contained in the former part of this section shall authorize the Collector to make any such endorsement on bills of exchange,

promissory notes, or instruments chargeable with the stamp-duty of one anna when brought to him on unstamped or insufficiently stamped paper subsequent to the drawing or execution thereof.

Revision of Collector's certificates and orders.

**40.** All certificates and orders of the Collector under this Act shall be open to revision on appeal or otherwise by the chief controlling Revenue Authority to which the Collector is subordinate:

Provided that no order passed on such revision shall invalidate any registration or other proceeding previously made or taken of or upon an instrument endorsed by the Collector under section twenty-four or section twenty-five.

Reference to High Court.

**41.** (*a*).—The chief controlling Revenue Authority may state any case coming before it under this Act and refer such case with its own opinion thereon, if the case arise in the Presidency of Fort St. George or the Presidency of Bombay, to the local High Court, and if it arise in any other part of British India, to the High Court at Fort William.

(*b*).—Every such case shall be decided by at least three Judges of the High Court to which it is referred, and in case of difference the opinion of the majority shall prevail.

(*c*).—If the High Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue Authority by which it was stated to make such additions thereto or alterations therein as the Court may direct in that behalf.

(*d*).—The High Court upon the hearing of any such case shall decide the questions raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded; and it shall send to the Revenue Authority by which the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Revenue Authority shall, on receiving the same, dispose of the case conformably to such judgment.

Power to remit penalties.

**42.** The chief controlling Revenue Authority may, upon petition, remit wholly or in part any penalty imposed under this Act.

Institution and conduct of prosecutions.

**43.** All prosecutions in respect of any offence punishable by this Act shall be instituted and conducted by the Collector or such other officer as the Local Government generally or the Collector specially authorizes in that behalf.

Jurisdiction of Magistrate.

**44.** Offences punishable under this Act may be tried within the limits of the towns of Calcutta, Madras and Bombay by a Magistrate of Police, and beyond those limits by the Magistrate of the District or a person exercising the powers of a Magistrate (as defined in the Code of Criminal Procedure) or of a subordinate Magistrate of the first class:

Provided that, in imposing penalties under this Act, no such person shall exceed the limits of jurisdiction prescribed for him by the said Code.

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## CHAPTER VI.—MISCELLANEOUS.

Refund in case of useless or spoiled stamped paper.

45. If any person possessing any stamped paper which has been obtained in the manner allowed by this Act, or any paper on which the stamp has been denoted by the Collector or the Superintendent of Stamps, does not require the same for use,

or if the paper so possessed becomes spoiled or unfit for use as hereinafter mentioned,

the Collector of the District in which the paper has been purchased may, upon application made to him within one year after such purchase, and upon delivery to him of such paper, refund the amount paid to Government for the same, whether by the applicant or any other person;

or in case the owner of the paper so spoiled or unfit for use desires to be supplied with stamped paper of similar or equal value, the Collector may cause such paper to be delivered to him or his agent upon payment of the value of the paper on which the new stamp or stamps shall be impressed.[a]

When stamped paper shall be held to be spoiled.

46. Stamped paper and paper on which the stamp has been denoted by the Collector or the Superintendent of Stamps shall be held to be spoiled or unfit for use within the meaning of section forty-five when—

by accident happening to the same before any writing thereupon has been finally signed and executed, it is rendered unfit for use;

or when, because of some error in the drawing up or copying of any writing thereon, discovered before such writing has been finally signed and executed, it is rendered of no avail;

or when, by reason of death or refusal of the party whose signature may be necessary to effect the transaction intended by such writing, it remains incomplete and of no avail;

or when, by refusal of any office or trust granted by a writing thereon, it has failed of the purpose intended;

or when, by reason of failure of consideration, the transaction intended to be effected or evidenced by a writing thereon cannot be effected or evidenced;

or when the transaction intended to be effected by a writing thereon has been effected by some other instrument duly stamped;

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[a] See Financial Department Notification No. 1042, dated 13th June 1873.

or when, in the case of a negotiable instrument, such instrument is, by reason of non-delivery to the payee or person acting in his behalf, or other cause, never brought into use;

or when, in the case of a bill of exchange other than a bill drawn in a set, it has not been presented for acceptance or payment.

Suit where consideration is not stated

**47.** Where in case of a sale, or an exchange upon which money is paid for equality of exchange, or a lease for a premium, the full consideration-money is not truly set forth in the manner hereby directed, the purchaser, or the person paying money for equality of exchange, or the lessee (as the case may be), or his representative in interest, may sue for and recover back from the seller, or the person receiving such money, or the lessor (as the case may be), or his representative in interest, so much of the consideration-money as is not set forth as aforesaid, or the whole thereof, if no part of the same is so set forth;

and in such suit, notwithstanding anything hereinbefore contained, the conveyance, instrument of exchange, or lease shall be admissible in evidence.

Power to make rules for sale of stamps.

**48.** Every Local Government shall frame rules for regulating the sale of stamps and stamped paper required by this Act or by the Court Fees Act, 1870,[a] for determining the persons by whom such sale is to be conducted, and for fixing the remuneration of such persons within the territories subject to its control; and may from time to time alter and add to such rules.[b]

Approval and publication of rules.

Such rules, alterations, and additions shall, when approved by the Governor General of India in Council, and after publication in the local official Gazette, have the force of law.

Penalty for disobeying rules.

Any person appointed to sell such stamps and stamped paper who knowingly disobeys any such rule shall be punished with simple imprisonment for a term which may extend to six months, or with fine not exceeding five hundred rupees, or with both.

Employment of single impressed stamp.

**49.** When an impressed stamp is used under section five to denote the amount of duty with which any instrument is chargeable, such amount shall be denoted by a single stamp, except when such amount exceeds one thousand rupees, in which case it may be denoted by two or more impressed stamps of which the aggregate amount is the amount so required:

Provided that, when a single impressed stamp of any amount less than one thousand rupees is not procurable on application to the Collector or stamp-vendor appointed under section forty-eight, it shall be lawful, on such officer

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[a] See Act No. VII of 1870, s. 34.

[b] See *Bombay Government Gazette*, 11th December 1873, p. 1009 and 20th October 1874, p. 690, *Oudh Government Gazette*, 8th August 1874, p 16.

making a certificate to that effect, for the person requiring such stamp to denote the amount by two or more impressed stamps, of which the aggregate amount is the amount so required.

Employment of several stamped papers.

**50.** When more stamped papers than one are used under section forty-nine for an instrument chargeable with stamp-duty under this Act, each paper so used shall contain a part of the instrument.

Act to be translated, indexed and sold cheaply.

**51.** Every Local Government shall cause this Act and the schedules hereto annexed to be carefully translated into the principal vernacular languages of the territories subject to its control.

A full alphabetical index shall be added to every such translation, and the translation and index shall be printed and sold to the public at a price not exceeding four annas per copy.

## SCHEDULE I.

*Instruments chargeable with ad valorem Stamp-duties.*

| Description of Instruments. | | Proper Stamp-duty. | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | If drawn singly. | | | If drawn in set of two, for each part of the set. | | | If drawn in set of three, for each part of the set. | | |
| | | Rs. | A. | P. | Rs. | A. | P. | Rs. | A. | P. |
| 1. BILL OF EXCHANGE PAYABLE OTHERWISE THAN ON DEMAND ... | When the amount of the bill or note does not exceed Rs. 100 ... | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 1 | 0 |
| | And when the amount exceeds Rs. 100 but does not exceed Rs. 200 ... ... | 0 | 2 | 0 | 0 | 1 | 0 | 0 | 1 | 0 |
| | And when the amount exceeds Rs. 200 but does not exceed Rs. 300 | 0 | 3 | 0 | 0 | 2 | 0 | 0 | 1 | 0 |
| | And when the amount exceeds Rs. 300 but does not exceed Rs. 600 | 0 | 6 | 0 | 0 | 3 | 0 | 0 | 2 | 0 |
| | And when the amount exceeds Rs. 600 but does not exceed Rs. 900 | 0 | 9 | 0 | 0 | 5 | 0 | 0 | 3 | 0 |
| | And when the amount exceeds Rs. 900 but does not exceed Rs. 1,200 ... ... | 0 | 12 | 0 | 0 | 6 | 0 | 0 | 4 | 0 |

## SCHEDULE I—(*continued*).

*Instruments chargeable with ad valorem Stamp-duties.*

| Description of Instruments. | | Proper Stamp-duty. | | |
|---|---|---|---|---|
| | | If drawn singly. | If drawn in set of two, for each part of the set. | If drawn in set of three, for each part of the set. |
| | | Rs. A. P. | Rs. A. P. | Rs. A. P. |
| 2. Promissory note payable otherwise than on demand ... | And when the amount exceeds Rs. 1,200 but does not exceed Rs. 1,500 ... ... | 0 15 0 | 0 8 0 | 0 5 0 |
| | And when the amount exceeds Rs. 1,500 but does not exceed Rs. 2,500 ... ... | 1 8 0 | 0 12 0 | 0 8 0 |
| | For every Rs. 2,500 or part thereof in excess of Rs. 2,500 up to Rs. 10,000 ... ... | 1 8 0 | 0 12 0 | 0 8 0 |
| | For every Rs. 5,000 or part thereof in excess of Rs. 10,000 up to Rs. 30,000 ... | 3 0 0 | 1 8 0 | 1 0 0 |
| | And for every Rs. 10,000 or part thereof in excess of Rs. 30,000 ... | 6 0 0 | 3 0 0 | 2 0 0 |

| | | If drawn singly. | If drawn in duplicate, then for each part. |
|---|---|---|---|
| | | Rs. A. P. | Rs. A. P. |
| 3. Policy of insurance ... | When the amount insured does not exceed Rs. 1,000 ... ... | 0 4 0 | 0 2 0 |
| | And for every further sum of Rs. 1,000 insured or for every part thereof | 0 4 0 | 0 2 0 |

## SCHEDULE I—(*continued*).

*Instruments chargeable with ad valorem Stamp-duties.*

| Description of Instruments. | | Proper Stamp-duty. |
|---|---|---|
| | | Rs. A. P. |
| 4. * Transfer of a share in a company or association... | When the amount paid for such share does not exceed Rs. 100 ... | 0 4 0 |
| | For every Rs. 100 of such amount or part thereof in excess of Rs. 100 up to Rs. 1,000 ... | 0 4 0 |
| | And for every Rs. 500 of the same or part thereof in excess of Rs. 1,000 ... | 1 4 0 |
| 5. Bond for any specified amount, other than an administration bond ... | When the amount secured does not exceed Rs. 25 | 0 2 0 |
| | When such amount exceeds Rs. 25 but does not exceed Rs. 50 ... | 0 4 0 |
| | When such amount exceeds Rs. 50 but does not exceed Rs. 100 ... | 0 8 0 |
| | For every Rs. 100 or part thereof in excess of Rs. 100 up to Rs. 1,000 ... | 0 8 0 |
| 6. Bottomry-bond ... | For every Rs. 500 or part thereof in excess of Rs. 1,000 up to Rs. 10,000 | 2 8 0 |
| 7. Respondentia-bond ... | For every Rs. 1,000 or part thereof in excess of Rs. 10,000 up to Rs. 30,000 ... | 2 8 0 |
| | And for every Rs. 10,000 or part thereof in excess of Rs. 30,000 ... | 12 8 0 |
| 8. Customs-bond... | (*a*). When the amount secured does not exceed Rs. 1,000 ... | The stamp-duty with which a bond for such amount is chargeable (No. 5). |
| | (*b*.) When such amount exceeds Rs. 1,000 ... | Five rupees. |

Note.—The stamp-duty chargeable on the instrument marked* may be denoted by an adhesive stamp when the transfer is made by endorsement.

SCHEDULE I—(*continued*).

*Instruments chargeable with ad valorem Stamp-duties.*

| Description of Instruments. | | Proper Stamp-duty. |
|---|---|---|
| 9. Indemnity-bond ... | (*a*). When the amount secured does not exceed Rs. 3,000. . | The stamp-duty with which a bond for such amount is chargeable (No. 5). |
| | (*b*). When such amount exceeds Rs. 3,000 or is not expressed. | Sixteen rupees. |
| 10 Mortgage-deed, when possession of the property comprised therein is not given by the mortgagor at the time of execution ... | ... ... | The stamp-duty with which a bond for the amount secured is chargeable (No. 5). |
| 11. Instrument of further charge on such property, whether by indorsement or otherwise ... | | |
| 12. Bond or mortgage-deed for the due execution of an office, or to account for money received by virtue thereof | (*a*). When the amount secured does not exceed Rs. 3,000 ... | The stamp-duty with which a bond for such amount is chargeable (No. 5). |
| | (*b*). When such amount exceeds Rs. 3,000 or the amount is not expressed ... | Sixteen rupees. |

SCHEDULE I—(*continued*).

*Instruments chargeable with ad valorem Stamp-duties.*

| Description of Instruments. | | Proper Stamp-duty. | | |
|---|---|---|---|---|
| 13. Assignment of any interest secured by a bond or mortgage-deed | (*a*). When the amount of such interest does not exceed Rs. 3,000 ... | The stamp-duty with which a bond for such amount is chargeable (No. 5). | | |
| | (*b*). In any other case ... | Sixteen rupees. | | |
| 14. Settlement... ... ... | | The stamp-duty with which a bond for the amount or value of the property thereby settled is chargeable (No. 5). | | |
| | | Rs. | A. | P. |
| 15. Conveyance | When the amount paid or secured does not exceed Rs. 50 ... ... | 0 | 8 | 0 |
| 16. Mortgage-deed, when possession of the property comprised therein is given by the mortgagor at the time of execution ... | When such amount exceeds Rs. 50 but does not exceed Rs. 100 ... | 1 | 0 | 0 |
| | For every Rs. 100 or part thereof in excess of Rs. 100 up to Rs. 1,000 | 1 | 0 | 0 |
| | For every Rs. 500 or part thereof in excess of Rs. 1,000 up to Rs. 10,000 ... | 5 | 0 | 0 |
| 17. Instrument of further charge on such property, whether by indorsement or otherwise ... | For every Rs. 1,000 or part thereof in excess of Rs. 10,000 up to Rs. 30,000 ... | 5 | 0 | 0 |
| | For every Rs. 10,000 or part thereof in excess of Rs. 30,000 up to Rs. 1,00,000 ... | 50 | 0 | 0 |
| | For every Rs. 20,000 or part thereof in excess of Rs. 1,00,000 ... | 75 | 0 | 0 |

## SCHEDULE I—(*continued*).

*Instruments chargeable with ad valorem Stamp-duties.*

| Description of Instruments. | | Proper Stamp-duty. |
|---|---|---|
| 18. Instrument of exchange or partition of immoveable property when money is paid for equality of exchange or partition ... | ... ... | The stamp-duty with which a conveyance for the amount so paid is chargeable (No. 15), in addition to the stamp-duty with which an instrument of exchange of immoveable property or a partition-deed is chargeable under schedule II. |
| 19. Lease ... | (*a*). Where the lease is expressed to be for a term of less than one year ... | The stamp-duty with which a bond (No. 5) for the total amount payable under such lease is chargeable. |
| | (*b*). Where the lease is expressed to be for a term of not less than one year but not more than three years ... | The stamp-duty with which a bond for the total amount payable under such lease during the first year of the term is chargeable. |
| | (*c*). Where the lease is expressed to be for a term exceeding three years, or where no term is expressed ... | The stamp-duty with which a conveyance for the total amount payable under such lease during the first year of the term is chargeable. |
| | (*d*). Where the lease is granted in consideration of a fine or premium and where no rent is reserved. | The stamp-duty with which a conveyance for the amount so paid is chargeable. |

## SCHEDULE I—(*continued*).

*Instruments chargeable with ad valorem Stamp-duties.*

| Description of Instruments. | | Proper Stamp-duty. |
|---|---|---|
| | (*e*). Where the lease is granted in consideration of a fine or premium and also of a rent ... | The stamp-duty with which a conveyance for the amount of the fine or premium is chargeable, in addition to the stamp-duty with which the lease would be chargeable in case no such fine or premium had been paid. |
| **20.** Surrender of lease ... | (*a*). Where the amount of stamp-duty chargeable on the lease does not exceed Rs. 16 ... | The stamp-duty with which the lease is chargeable (No. 19). |
| | (*b*). In any other case ... | Sixteen rupees. |
| **21.** Appraisement or valuation— of any property or of any interest therein ... or of the annual or monthly value thereof ... or of any repairs wanted or of the materials used or to be used in any building ... or of any Artificer's work | (*a*). Where the amount of such appraisement or valuation does not exceed Rs. 500 | Eight annas. |
| | (*b*). Where it exceeds Rs. 500 ... | One rupee. |

SCHEDULE I—(*continued*).

*Instruments chargeable with ad valorem Stamp-duties.*

| Description of Instruments. | | Proper Stamp-duty. |
|---|---|---|
| 22. Award ... | (*a*). Where the amount or value of the property in dispute expressed in such award does not exceed Rs. 500 ... | Eight annas. |
| | (*b*). Where such amount or value exceeds Rs. 500, or where no amount or value is expressed in the award ... | One rupee. |
| 23. Copy, duplicate or extract, attested to be a true copy, duplicate or extract ... | (*a*). If the duty chargeable on the original does not exceed Rs. 5, or if no duty is chargeable on the original ... | Eight annas. |
| | (*b*). If the duty chargeable on the original exceeds Rs. 5, but does not exceed Rs. 20 ... | One rupee. |
| | (*c*). If such duty exceeds Rs. 20, but does not exceed Rs. 50 | Two rupees. |
| | (*d*). If such duty exceeds Rs. 50 ... | Four rupees. |

## SCHEDULE I—(*continued*).

*Table showing the Stamp-duty chargeable under this schedule on any bill of exchange or promissory note, the amount of which does not exceed Rs.* 2,00,000.

| When the amount exceeds | | but does not exceed | Proper Stamp-duty. If drawn singly. | | If drawn in sets of two, for each part of the set. | | If drawn in sets of three, for each part of the set. | |
|---|---|---|---|---|---|---|---|---|
| Rs. ... | ... | Rs. 100 | Rs. 0 | A. 1 | Rs. 0 | A. 1 | Rs. 0 | A. 1 |
| 100 | ... | 200 | 0 | 2 | 0 | 1 | 0 | 1 |
| 200 | ... | 300 | 0 | 3 | 0 | 2 | 0 | 1 |
| 300 | ... | 600 | 0 | 6 | 0 | 3 | 0 | 2 |
| 600 | ... | 900 | 0 | 9 | 0 | 5 | 0 | 3 |
| 900 | ... | 1,200 | 0 | 12 | 0 | 6 | 0 | 4 |
| 1,200 | ... | 1,500 | 0 | 15 | 0 | 8 | 0 | 5 |
| 1,500 | ... | 2,500 | 1 | 8 | 0 | 12 | 0 | 8 |
| 2,500 | ... | 5,000 | 3 | 0 | 1 | 8 | 1 | 0 |
| 5,000 | ... | 7,500 | 4 | 8 | 2 | 4 | 1 | 8 |
| 7,500 | ... | 10,000 | 6 | 0 | 3 | 0 | 2 | 0 |
| 10,000 | ... | 15,000 | 9 | 0 | 4 | 8 | 3 | 0 |
| 15,000 | ... | 20,000 | 12 | 0 | 6 | 0 | 4 | 0 |
| 20,000 | ... | 25,000 | 15 | 0 | 7 | 8 | 5 | 0 |
| 25,000 | ... | 30,000 | 18 | 0 | 9 | 0 | 6 | 0 |
| 30,000 | ... | 40,000 | 24 | 0 | 12 | 0 | 8 | 0 |
| 40,000 | ... | 50,000 | 30 | 0 | 15 | 0 | 10 | 0 |
| 50,000 | ... | 60,000 | 36 | 0 | 18 | 0 | 12 | 0 |
| 60,000 | ... | 70,000 | 42 | 0 | 21 | 0 | 14 | 0 |
| 70,000 | ... | 80,000 | 48 | 0 | 24 | 0 | 16 | 0 |
| 80,000 | ... | 90,000 | 54 | 0 | 27 | 0 | 18 | 0 |
| 90,000 | ... | 1,00,000 | 60 | 0 | 30 | 0 | 20 | 0 |
| 1,00,000 | ... | 1,10,000 | 66 | 0 | 33 | 0 | 22 | 0 |
| 1,10,000 | ... | 1,20,000 | 72 | 0 | 36 | 0 | 24 | 0 |
| 1,20,000 | ... | 1,30,000 | 78 | 0 | 39 | 0 | 26 | 0 |
| 1,30,000 | ... | 1,40,000 | 84 | 0 | 42 | 0 | 28 | 0 |
| 1,40,000 | ... | 1,50,000 | 90 | 0 | 45 | 0 | 30 | 0 |
| 1,50,000 | ... | 1,60,000 | 96 | 0 | 48 | 0 | 32 | 0 |
| 1,60,000 | ... | 1,70,000 | 102 | 0 | 51 | 0 | 34 | 0 |
| 1,70,000 | ... | 1,80,000 | 108 | 0 | 54 | 0 | 36 | 0 |
| 1,80,000 | ... | 1,90,000 | 114 | 0 | 57 | 0 | 38 | 0 |
| 1,90,000 | ... | 2,00,000 | 120 | 0 | 60 | 0 | 40 | 0 |

## SCHEDULE I—*(continued.)*

*Table showing the Stamp-duty chargeable under this schedule on bonds for any sum not exceeding Rs.* 4,00,000.

| When such sum exceeds | | | but does not exceed | Proper Stamp-duty. | | |
|---|---|---|---|---|---|---|
| Rs. | ... | ... | Rs. 25 | Rs. 0 | A. 2 | |
| 25 | ... | ... | 50 | 0 | 4 | |
| 50 | ... | ... | 100 | 0 | 8 | |
| 100 | ... | ... | 200 | 1 | 0 | |
| 200 | ... | ... | 300 | 1 | 8 | |
| 300 | ... | ... | 400 | 2 | 0 | |
| 400 | ... | ... | 500 | 2 | 8 | |
| 500 | ... | ... | 600 | 3 | 0 | |
| 600 | ... | ... | 700 | 3 | 8 | |
| 700 | ... | ... | 800 | 4 | 0 | |
| 800 | ... | ... | 900 | 4 | 8 | |
| 900 | ... | ... | 1,000 | 5 | 0 | |
| 1,000 | ... | ... | 1,500 | 7 | 8 | |
| 1,500 | ... | ... | 2,000 | 10 | 0 | |
| 2,000 | ... | ... | 2,500 | 12 | 8 | |
| 2,500 | ... | ... | 3,000 | 15 | 0 | |
| 3,000 | ... | ... | 3,500 | 17 | 8 | |
| 3,500 | ... | ... | 4,000 | 20 | 0 | |
| 4,000 | ... | ... | 4,500 | 22 | 8 | |
| 4,500 | ... | ... | 5,000 | 25 | 0 | |
| 5,000 | ... | ... | 5,500 | 27 | 8 | |
| 5,500 | ... | ... | 6,000 | 30 | 0 | |
| 6,000 | ... | ... | 6,500 | 32 | 8 | |
| 6,500 | ... | ... | 7,000 | 35 | 0 | |
| 7,000 | ... | ... | 7,500 | 37 | 8 | |
| 7,500 | ... | ... | 8,000 | 40 | 0 | |
| 8,000 | ... | ... | 8,500 | 42 | 8 | |
| 8,500 | ... | ... | 9,000 | 45 | 0 | |
| 9,000 | ... | ... | 9,500 | 47 | 8 | |
| 9,500 | ... | ... | 10,000 | 50 | 0 | |
| 10,000 | ... | ... | 11,000 | 52 | 8 | |
| 11,000 | ... | ... | 12,000 | 55 | 0 | |
| 12,000 | ... | ... | 13,000 | 57 | 8 | |
| 13,000 | ... | ... | 14,000 | 60 | 0 | |
| 14,000 | ... | ... | 15,000 | 62 | 8 | |
| 15,000 | ... | ... | 16,000 | 65 | 0 | |
| 16,000 | ... | ... | 17,000 | 67 | 8 | |
| 17,000 | ... | ... | 18,000 | 70 | 0 | |

SCHEDULE I—*(continued.)*

*Table showing the Stamp-duty chargeable under this schedule on bonds for any sum not exceeding Rs.* 4,00,000—(continued.)

| When such sum exceeds | | | but does not exceed | Proper Stamp-duty. | | |
|---|---|---|---|---|---|---|
| Rs. 18,000 | ... | ... | Rs. 19,000 | Rs. 72 | A. | 8 |
| 19,000 | ... | ... | 20,000 | 75 | | 0 |
| 20,000 | ... | ... | 21,000 | 77 | | 8 |
| 21,000 | ... | ... | 22,000 | 80 | | 0 |
| 22,000 | ... | ... | 23,000 | 82 | | 8 |
| 23,000 | ... | .. | 24,000 | 85 | | 0 |
| 24,000 | ... | ... | 25,000 | 87 | | 8 |
| 25,000 | ... | ... | 26,000 | 90 | | 0 |
| 26,000 | ... | ... | 27,000 | 92 | | 8 |
| 27,000 | ... | ... | 28,000 | 95 | | 0 |
| 28,000 | ... | ... | 29,000 | 97 | | 8 |
| 29,000 | ... | ... | 30,000 | 100 | | 0 |
| 30,000 | ... | ... | 40,000 | 112 | | 8 |
| 40,000 | ... | ... | 50,000 | 125 | | 0 |
| 50,000 | ... | ... | 60,000 | 137 | | 8 |
| 60,000 | ... | ... | 70,000 | 150 | | 0 |
| 70,000 | ... | ... | 80,000 | 162 | | 8 |
| 80,000 | ... | ... | 90,000 | 175 | | 0 |
| 90,000 | ... | ... | 1,00,000 | 187 | | 8 |
| 1,00,000 | ... | ... | 1,10,000 | 200 | | 0 |
| 1,10,000 | ... | ... | 1,20,000 | 212 | | 8 |
| 1,20,000 | ... | ... | 1,30,000 | 225 | | 0 |
| 1,30,000 | ... | ... | 1,40,000 | 237 | | 8 |
| 1,40,000 | ... | ... | 1,50,000 | 250 | | 0 |
| 1,50,000 | ... | ... | 1,60,000 | 262 | | 8 |
| 1,60,000 | ... | ... | 1,70,000 | 275 | | 0 |
| 1,70,000 | ... | ... | 1,80,000 | 287 | | 8 |
| 1,80,000 | ... | ... | 1,90,000 | 300 | | 0 |
| 1,90,000 | ... | .. | 2,00,000 | 312 | | 8 |
| 2,00,000 | ... | ... | 2,10,000 | 325 | | 0 |
| 2,10,000 | ... | ... | 2,20,000 | 337 | | 8 |
| 2,20,000 | ... | ... | 2,30,000 | 350 | | 0 |
| 2,30,000 | ... | ... | 2,40,000 | 362 | | 8 |
| 2,40,000 | ... | ... | 2,50,000 | 375 | | 0 |
| 2,50,000 | ... | ... | 2,60,000 | 387 | | 8 |
| 2,60,000 | ... | ... | 2,70,000 | 400 | | 0 |
| 2,70,000 | ... | ... | 2,80,000 | 412 | | 8 |
| 2,80,000 | ... | ... | 2,90,000 | 425 | | 0 |

SCHEDULE I—(*continued.*)

*Table showing the Stamp-duty chargeable under this schedule on bonds for any sum not exceeding Rs.* 4,00,000—(concluded.)

| When such sum exceeds | | | but does not exceed | Proper Stamp-duty. | | | |
|---|---|---|---|---|---|---|---|
| Rs. 2,90,000 | ... | ... | Rs. 3,00,000 | Rs. | 437 | A. | 8 |
| 3,00,000 | ... | ... | 3,10,000 | | 450 | | 0 |
| 3,10,000 | ... | ... | 3,20,000 | | 462 | | 8 |
| 3,20,000 | ... | ... | 3,30,000 | | 475 | | 0 |
| 3,30,000 | ... | ... | 3,40,000 | | 487 | | 8 |
| 3,40,000 | ... | ... | 3,50,000 | | 500 | | 0 |
| 3,50,000 | ... | ... | 3,60,000 | | 512 | | 8 |
| 3,60,000 | ... | ... | 3,70,000 | | 525 | | 0 |
| 3,70,000 | ... | ... | 3,80,000 | | 537 | | 8 |
| 3,80,000 | ... | ... | 3,90,000 | | 550 | | 0 |
| 3,90,000 | ... | ... | 4,00,000 | | 562 | | 8 |

*Table showing the Stamp-duty chargeable under this schedule on any conveyance the consideration-money set forth in which does not exceed Rs.* 4,00,000.

| When the amount of such consideration-moneye xceeds. | | | but does not exceed. | Proper Stamp-duty. | | | |
|---|---|---|---|---|---|---|---|
| Rs. ... | ... | ... | Rs. 50 | Rs. | 0 | A. | 8 |
| 50 | ... | ... | 100 | | 1 | | 0 |
| 100 | ... | ... | 200 | | 2 | | 0 |
| 200 | ... | ... | 300 | | 3 | | 0 |
| 300 | ... | ... | 400 | | 4 | | 0 |
| 400 | ... | ... | 500 | | 5 | | 0 |
| 500 | ... | ... | 600 | | 6 | | 0 |
| 600 | ... | ... | 700 | | 7 | | 0 |
| 700 | ... | ... | 800 | | 8 | | 0 |
| 800 | ... | ... | 900 | | 9 | | 0 |
| 900 | ... | ... | 1,000 | | 10 | | 0 |
| 1,000 | ... | ... | 1,500 | | 15 | | 0 |
| 1,500 | ... | ... | 2,000 | | 20 | | 0 |
| 2,000 | ... | ... | 2,500 | | 25 | | 0 |
| 2,500 | ... | ... | 3,000 | | 30 | | 0 |
| 3,000 | ... | ... | 3,500 | | 35 | | 0 |

SCHEDULE I—(*continued.*)

*Table showing the Stamp-duty chargeable under this schedule on any conveyance the consideration-money set forth in which does not exceed Rs.* 4,00,000,—(continued.)

| When the amount of such consideration-money exceeds. | | but does not exceed. | | Proper Stamp-duty. | |
|---|---|---|---|---|---|
| Rs. 3,500 | ... ... | Rs. 4,000 | | Rs. 40 | A. 0 |
| 4,000 | ... ... | 4,500 | | 45 | 0 |
| 4,500 | ... ... | 5,000 | | 50 | 0 |
| 5,000 | ... ... | 5,500 | | 55 | 0 |
| 5,500 | ... ... | 6,000 | | 60 | 0 |
| 6,000 | ... ... | 6,500 | | 65 | 0 |
| 6,500 | ... ... | 7,000 | | 70 | 0 |
| 7,000 | ... ... | 7,500 | | 75 | 0 |
| 7,500 | ... ... | 8,000 | | 80 | 0 |
| 8,000 | ... ... | 8,500 | | 85 | 0 |
| 8,500 | ... ... | 9,000 | | 90 | 0 |
| 9,000 | ... ... | 9,500 | | 95 | 0 |
| 9,500 | ... ... | 10,000 | | 100 | 0 |
| 10,000 | ... ... | 11,000 | | 105 | 0 |
| 11,000 | ... ... | 12,000 | | 110 | 0 |
| 12,000 | ... ... | 13,000 | | 115 | 0 |
| 13,000 | ... ... | 14,000 | | 120 | 0 |
| 14,000 | ... ... | 15,000 | | 125 | 0 |
| 15,000 | ... ... | 16,000 | | 130 | 0 |
| 16,000 | ... ... | 17,000 | | 135 | 0 |
| 17,000 | ... ... | 18,000 | | 140 | 0 |
| 18,000 | ... ... | 19,000 | | 145 | 0 |
| 19,000 | ... ... | 20,000 | | 150 | 0 |
| 20,000 | ... ... | 21,000 | | 155 | 0 |
| 21,000 | ... ... | 22,000 | | 160 | 0 |
| 22,000 | ... ... | 23,000 | | 165 | 0 |
| 23,000 | ... ... | 24,000 | | 170 | 0 |
| 24,000 | ... ... | 25,000 | | 175 | 0 |
| 25,000 | ... ... | 26,000 | | 180 | 0 |
| 26,000 | ... ... | 27,000 | | 185 | 0 |
| 27,000 | ... ... | 28,000 | | 190 | 0 |
| 28,000 | ... ... | 29,000 | | 195 | 0 |
| 29,000 | ... ... | 30,000 | | 200 | 0 |
| 30,000 | ... ... | 40,000 | | 250 | 0 |
| 40,000 | ... ... | 50,000 | | 300 | 0 |
| 50,000 | ... ... | 60,000 | | 350 | 0 |

## SCHEDULE I—*(concluded)*

*Table showing the Stamp-duty chargeable under this schedule on any conveyance the consideration-money set forth in which does not exceed Rs.* 4,00,000—(concluded).

| When the amount of such consideration-money exceeds | but does not exceed | Proper Stamp-duty. | |
|---|---|---|---|
| Rs. 60,000 ... ... | Rs. 70,000 | Rs. 400 | A. 0 |
| 70,000 ... ... | 80,000 | 450 | 0 |
| 80,000 ... ... | 90,000 | 500 | 0 |
| 90,000 ... ... | 1,00,000 | 550 | 0 |
| 1,00,000 ... ... | 1,20,000 | 625 | 0 |
| 1,20,000 ... ... | 1,40,000 | 700 | 0 |
| 1,40,000 ... ... | 1,60,000 | 775 | 0 |
| 1,60,000 ... ... | 1,80,000 | 850 | 0 |
| 1,80,000 ... ... | 2,00,000 | 925 | 0 |
| 2,00,000 ... ... | 2,20,000 | 1,000 | 0 |
| 2,20,000 ... ... | 2,40,000 | 1,075 | 0 |
| 2,40,000 ... ... | 2,60,000 | 1,150 | 0 |
| 2,60,000 ... ... | 2,80,000 | 1,225 | 0 |
| 2,80,000 ... ... | 3,00,000 | 1,300 | 0 |
| 3,00,000 ... ... | 3,20,000 | 1,375 | 0 |
| 3,20,000 ... ... | 3,40,000 | 1,450 | 0 |
| 3,40,000 ... ... | 3,60,000 | 1,525 | 0 |
| 3,60,000 ... ... | 3,80,000 | 1,600 | 0 |
| 3,80,000 ... ... | 4,00,000 | 1,675 | 0 |

## SCHEDULE II.

*Instruments chargeable with fixed Stamp-duties.*

| Description of Instruments. | Proper Stamp-duty. |
|---|---|
| 1.—Bill of exchange, promissory note cheque, or order for the payment on demand of an amount exceeding twenty rupees ... | One anna.* |
| 2.—Letter of credit ... ... ... | One anna.* |

* This duty may be denoted by an adhesive stamp.

SCHEDULE II—(*continued*).

| DESCRIPTION OF INSTRUMENTS. | PROPER STAMP-DUTY. |
|---|---|
| 3.—AGREEMENT OR MEMORANDUM OF AN AGREEMENT relating to the sale of any government security, share in a company or association, or bill of exchange ... ... ... | One anna.* |
| 4.—CERTIFICATE OR OTHER DOCUMENT purporting to denote the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any company or association, or proposed company or association, or to become proprietor of shares, scrip or stock in or of any such company or association ... ... ... | |
| 5.—NOTE OR MEMORANDUM written in any book or written on a separate paper, whereby any account, debt or demand, or any part of any account, debt or demand therein specified, and amounting to twenty rupees or upwards, is expressed to have been balanced, or is acknowledged to be due ... ... | |
| 6.—SHIPPING ORDER for or relating to the conveyance of goods on board of any vessel ... | |
| 7.—RECEIPT OR DISCHARGE given for or upon the payment of money, or delivery of goods, in satisfaction of a debt, the amount or value of which money or goods exceeds twenty rupees ... ... ... ... | |
| 8.—PROXY to vote at any one meeting of— | |
| (*a*).—Members of a company or association whose stock or funds is or are divided into shares and transferable ... | |
| (*b*).—Municipal Commissioners ... | |
| (*c*).—Justices of the Peace, being a body corporate ... ... ... | |
| (*d*).—Proprietors, members or contributors to the funds of any institution ... | |
| 9.—BILL OF LADING ... ... ... | Four annas. |
| 10.—DOCK-WARRANT ... ... ... | |

* This duty may be denoted by an adhesive stamp.

SCHEDULE II—(*continued*).

| DESCRIPTION OF INSTRUMENTS. | PROPER STAMP-DUTY. |
|---|---|
| 11.—ANY AGREEMENT OR MEMORANDUM OF AN AGREEMENT not otherwise provided for by this Act:<br><br>Provided that where two or more letters are offered in evidence to prove any agreement between the parties who shall have written such letters, it shall be sufficient if any one of such letters shall be stamped as an agreement.<br><br>12.—NOTICE OF PROTEST by the master of a ship ...<br><br>13.—POWER-OF-ATTORNEY to present for registration—<br><br>(*a*).—A single instrument ... ...<br><br>(*b*).—Any number of instruments required for the completion of a single transaction ... ... ... | Eight annas. |
| 14.—AFFIDAVIT not made for the immediate purpose of being produced in any Court ...<br><br>15.—COLLATERAL INSTRUMENT not otherwise provided for by this schedule ... ...<br><br>16.—COUNTERPART OF ANY INSTRUMENT chargeable with stamp-duty under this Act: Provided that the counterpart shall not be available unless the Collector or such other officer as he may authorize in that behalf shall certify that the proper stamp-duty on the original instrument has been paid. Such certificate shall be endorsed on the counterpart on the same being produced together with the original instrument, and on the whole being duly executed and duly stamped in other respects ...<br><br>17.—INSTRUMENT OF DISSOLUTION OF PARTNERSHIP ... | One rupee. |
| 18.—POWER-OF-ATTORNEY for the performance of a single act when the value of the matter to be dealt with does not exceed five hundred rupees ... ... ... ... | One rupee. |

SCHEDULE II—(*continued*).

| DESCRIPTION OF INSTRUMENTS. | PROPER STAMP-DUTY. |
|---|---|
| 19.—POWER-OF-ATTORNEY for the performance of a single act when the value of the matter to be dealt with exceeds five hundred rupees | Two rupees. |
| 20.—BOND OR MORTGAGE-DEED executed as a collateral security for the performance of any act, where such performance is secured by some instrument previously executed on stamped paper in accordance with the law in force in British India at the time of its execution ... ... ... ... | |
| 21.—INSTRUMENT EVIDENCING AN AGREEMENT to secure the repayment on or before the expiration of three months from the date of such instrument of a loan made upon the deposit of title-deeds or other valuable security ... | |
| 22.—CHARTER-PARTY ... ... ... | |
| 23.—NOTARIAL ACT ... ... ... | |
| 24.—PROTEST OF A BILL OF EXCHANGE OR PROMISSORY NOTE ... ... ... | |
| 25.—PROTEST OF THE MASTER OR OWNER OF A SHIP ... | |
| 26.—INSTRUMENT OF CO-PARTNERSHIP ... ... | Four rupees. |
| 27.—RECONVEYANCE OF MORTGAGED PROPERTY, when the original mortgage-deed has been stamped in accordance with the law in force in British India at the time of its execution ... | |
| 28.—COMPOSITION-DEED ... ... ... | Eight rupees. |
| 29.—LETTER OF LICENSE ... ... ... | |
| 30.—RELEASE[a] ... ... ... | Eight rupees. |
| 31.—INSTRUMENT PURPORTING TO CONFER AN AUTHORITY TO ADOPT ... ... ... | |
| 32.—POWER-OF-ATTORNEY not otherwise provided for by this Schedule ... ... ... | |

[a] Now see Notification No. 2201, 2nd April 1874, supra p. 1149.

## SCHEDULE II—(*concluded*).

| DESCRIPTION OF INSTRUMENTS. | PROPER STAMP-DUTY. |
|---|---|
| 33.—ARTICLES OF ASSOCIATION of a Company ... | Sixteen rupees. |
| 34.—MEMORANDUM OF ASSOCIATION of a Company ... | |
| 35.—APPOINTMENT in execution of a power, whether of trustees, or of property, moveable or immoveable, where made by any writing not being a will ... ... ... | |
| 36.—DECLARATION OF ANY USE OR TRUST of or concerning any property, moveable or immoveable, where made by any writing not being a will ... ... ... ... | |
| 37.—INSTRUMENT OF GIFT OF IMMOVEABLE PROPERTY | |
| 38.—INSTRUMENT OF EXCHANGE OF IMMOVEABLE PROPERTY where no money is paid or agreed to be paid for equality of exchange[a] ... | |
| 39.—PARTITION-DEED relating to immoveable property where no money is paid or agreed to be paid for equality of exchange ... ... | |
| 40.—PETITION FOR LEAVE TO FILE A SPECIFICATION OF AN INVENTION, or for the extension of the term of the exclusive privilege of making, using or selling such invention in India ... | One hundred rupees. |
| 41.—ARTICLES OF CLERKSHIP or contract whereby any person shall first become bound to serve as a clerk in order to his admission as an Attorney in any High Court ... ... | Five hundred rupees. |

## ACT No. XX OF 1869.

*Received the Governor General's assent on the* 10*th September* 1869.

### An Act to provide for the good order and discipline of Volunteer Corps, and to invest them with certain powers.[b]

Preamble.

WHEREAS many loyal subjects of Her Majesty have volunteered their services for the protection of life and property and the preservation of the peace,

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[a] Reduced to four rupees, Notification No. 5934, dated 30th September 1874.

[b] A Code of Regulations for the Volunteer forces in India has been framed by order of the Governor General in Council and was published in a separate form, and circulated by the Military Department, G. O. No. 1203 of 1875, dated 1st December 1875.

and have with the sanction of Government associated and enrolled themselves as military corps under the command of officers appointed for that purpose; and it is expedient to provide for the good order and discipline of such corps, and to invest their members with certain powers; It is hereby enacted as follows:—

*Preliminary.*

Short title.

1. This Act may be called "The Indian Volunteers' Act, 1869."

Extent of Act.

2. This Act shall extend to the whole of British India and (so far as regards British subjects) to the dominions of Native Princes and States in alliance with Her Majesty.

3. [*Repealed by Act No. XIV of* 1870.]

"Magistrate."

4. In this Act "Magistrate" means, within the limits of the Presidency Towns, a Magistrate of Police and, without those limits, a person exercising the full powers of a Magistrate.

*Formation and Dissolution of Volunteer Corps.*

Formation of corps.

5. Corps of Volunteers may, with the sanction of the Governor General of India in Council, or of the Local Government,[a] be formed in any part of British India or of the said dominions.

Certificate of commanding officer to be evidence of enrolment.

6. A certificate of enrolment in such corps, signed by the Commanding officer thereof, shall be *primâ facie* evidence of such enrolment.

Power to disband corps or remove members.

7. The Governor General of India in Council or the Local Government[a] may disband any corps formed or enrolled under the provisions of this Act, or of Act No. XXIII of 1857, or remove from such corps any member thereof.

*Application of Articles of War.*

Volunteers subjected to Articles of War so far as they apply to officers.

8. Every member of a corps of Volunteers shall, for all military offences of which he shall be guilty whilst on actual duty or on parade, be subject to the Articles of War for the time being in force for the better government of Her Majesty's Army, so far as the same are applicable to officers and consistent with the provisions of this Act:

Proviso.

Provided that no such member shall for any offence against the said Articles be subject to the punishment of death.

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[a] The Chief Commissioner of Mysore and Coorg has been invested with the powers of a Local Government under this Act in respect to all matters connected with the Bangalore Rifle Volunteers.

*Courts-martial.*

9. General Courts-martial shall be convened and appointed by the Commanding officer of the corps, with the sanction of the Local Government, for the trial of military offences of which any member of such corps shall be guilty whilst on actual duty.

Appointment of and sentences by General Courts-martial.

No sentence of such Courts-martial shall be put into execution until after a report of the whole proceedings shall have been made to, and the sentence shall have been confirmed by, the Local Government.

The Local Government may commute any such sentence for a less punishment, or pardon the offender.

10. General Courts-martial shall consist of not less than nine members of the corps, and every member of the corps, whether an officer or not, shall be competent to sit and act as a member of such Court-martial.

General Courts-martial of whom to be composed.

11. Regimental Courts-martial may be convened by the Commanding officer of the corps, and shall consist of not less than three members of the corps.

Regimental Courts-martial.

12. The proceedings of Courts-martial convened under this Act shall be conducted according to the laws and customs applicable to Courts-martial held under the said Articles of War, except so far as the same are inconsistent with the provisions of this Act.

Procedure of Courts-martial held under this Act.

*Withdrawal from Corps.*

13. Any person enrolled as a member of a corps of Volunteers, whether he shall have been elected or commissioned as an officer in such corps or not, may, except whilst on actual duty, quit the corps upon giving to the officer commanding the corps seven days' previous notice in writing of his intention so to do, or without such notice if the commanding officer of the corps shall consider it reasonable and allow him so to do.

Power to quit the corps.

14. Every commission to any member of a corps of Volunteers appointing him an officer in such corps shall cease upon his retirement or dismissal from the corps.

Commissions to officers to cease on retirement or dismissal.

15. Every member of a corps of Volunteers who shall have received any arms, ammunition, accoutrements, or uniform belonging to Government, or which shall have been furnished from the public stores, or at the public expense, shall, upon his quitting such corps,

Delivery of arms belonging to Government by members quitting the corps.

or upon his dismissal therefrom,

or whenever he shall be required so to do by the Commanding officer of the corps,

or whenever the corps shall be disbanded,

deliver up to the Commanding officer or such person as he shall appoint to receive the same, all such arms, ammunition, accoutrements, and uniform in good order and condition, reasonable wear thereof only excepted;

and in default thereof he shall pay such sum of money as shall be adjudged by a regimental Court-martial to be assembled for that purpose by the Commanding officer of the corps. A copy of such adjudication, signed by the president of the Court-martial, shall be sent to the principal Court of original civil jurisdiction in the district in which the adjudication shall have been given, and shall be executed by such Court as if it were a decree for money under the Code of Civil Procedure.

*Local Limits of Service.*

No member bound to serve beyond certain distance.

**16.** No member of a corps of Volunteers shall be bound, without his consent, to serve or proceed on duty beyond the limits within which he shall have voluntarily engaged to serve or proceed on duty in accordance with the terms upon which the corps to which he belongs shall have been constituted; and in case no such limits shall have been fixed, he shall not be liable to serve or proceed on duty beyond four miles from the place at which he was enrolled.

*Rules.*

Commanding Officer to frame rules which shall be binding on the members.

**17.** The Commanding officer of every corps of Volunteers may frame such general rules as he may think fit for regulating the times at which and the manner in which the duties of the corps and of the several members or detachments thereof shall be discharged.

Such rules, when sanctioned by the Local Government, shall be binding on the corps and on the several members thereof.

*Penalties.*

Not attending actual duty other than drill or parade.

**18.** If any member of a corps of Volunteers, being warned for actual duty other than drill or parade, shall, without reasonable excuse, neglect to attend such duty, he shall be liable, upon conviction by a General Court-martial, to a fine not exceeding one hundred rupees, or to simple dismissal from the corps, or to dismissal from the corps as unworthy to belong to it.

Not attending drill or parade.

**19.** If any member of such corps shall without reasonable excuse neglect to attend drill or parade at such times as may be appointed for that purpose,

Other minor military offence.

or shall be guilty of any neglect of duty or other military offence which in the judgment of the Commanding officer of the corps will be sufficiently punished by a small fine,

he shall be liable to pay such fine, not exceeding fifty rupees, as a regimental Court-martial shall impose.

Punishment for non-payment of fine.

**20.** If any member of such corps shall neglect or refuse to pay any fine to which he shall be sentenced by any Court-martial, within such time as shall be fixed by the Commanding officer of the corps, he may be dismissed by the said Commanding officer from the said corps; and every such dismissal shall be recorded and reported to the Local Government.

Penalty for assaulting or resisting Volunteers in discharge of their duty.

**21.** Whoever assaults or resists, or abets within the meaning of the Indian Penal Code, any person in assaulting or resisting any member of such corps in the discharge of his duty, shall be punishable, on conviction before a Magistrate, with fine not exceeding two hundred rupees, or with imprisonment for any term not exceeding six months, or with both.

Recovery of fines.

**22.** In default of payment of any fine imposed by a Court-martial under this Act, a copy of the sentence of the Court-martial imposing the fine, signed by the President of such Court, may be sent to a Magistrate in the presidency town or the district in which the fine shall have been imposed, who shall thereupon cause the fine to be recovered as if he had himself imposed it.

Fines imposed under section twenty-one may be recovered, if for offences committed outside the limits of the presidency towns, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act regulating the police of such towns in force for the time being.

*Powers of Volunteers.*

Power to disarm persons.

**23.** Any member of a corps of Volunteers, whenever he may be in discharge of his duty as a member of the corps, and wheresoever he may then be, may disarm any person not being in Her Majesty's military or naval service or a Police-officer, found between sunset and sunrise in any public street, thoroughfare, or other public place, armed with a sword, spear, gun, or other warlike instrument, without a pass or license for that purpose from the Commissioner of Police or other officer authorized by Government to grant the same;

and may also disarm any person found armed at any time contrary to law or to any order of Government in any public street, thoroughfare, or other public place;

And to apprehend and deliver to police.

and may also apprehend and deliver over to a Police-officer any person so found armed in order that he may be dealt with according to law;

Forfeiture of weapons seized.

and the weapon so seized shall be forfeited to Government or otherwise dealt with according to law, or to the orders of Government.

Power to prevent disturbances of the public peace.

To disperse unlawful assemblies.

**24.** Any member of such corps, whenever he is on duty, may prevent any disturbance of the public peace, and disperse any persons whom he may find assembled together to the number of five or more without reasonable cause between sunset and sunrise in any public street, thoroughfare, or other public place in which such member of the said corps may be in the discharge of his duty,

To apprehend certain suspected persons.

and may also apprehend any person reasonably suspected of having committed, or being about to commit any offence against the State, or of having abetted within the meaning of the Indian Penal Code, or being about to abet, any other person, in the commission of such offence; and deliver him over to some Police-officer.

*Miscellaneous.*

Exemption from horse-tax.

**25.** Every mounted officer, and every mounted orderly of a corps of Volunteers, and every member of such corps, while he belongs to a troop of cavalry in such corps, shall be at liberty to keep one horse without being liable to pay in respect thereof any municipal or other tax imposed upon horses.

Suits for things done in pursuance of this Act.

**26**[a]. No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends, nor after the expiration of three months from the accrual of the cause of suit or other proceeding.

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## ACT No. I of 1870.

*Received the Governor General's assent on the* 14*th January* 1870.

## An Act to provide Rules relating to Quarantine.[b]

Preamble.

WHEREAS it is expedient to empower expressly the Governor General of India in Council and the Local Governments to make rules relating to quarantine; It is hereby enacted as follows:—

Power to make quarantine rules.

**1.** It shall be lawful for the Governor General of India in Council and (with the previous sanction of the said Governor General in Council) for the Local Governments respectively, from time to time, to make rules

for putting any vessel into a state of quarantine;

for regulating the intercourse of vessels in a state of quarantine with the shore, or with other vessels; and

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[a] Repealed, so far as it relates to the limitation of suits, by Act No. IX of 1871.

[b] Declared to apply to the whole of British India except the Scheduled Districts, Act No. XV of 1874.

for regulating the intercourse between ports where an infectious disease prevails and other ports.

2. All such rules shall be published in the *Gazette of India* and also in the local Gazette,[a] and shall thereupon be deemed to be rules made and promulgated under section 271 of the Indian Penal Code.

Quarantine rules to be deemed rules under section 271 of Penal Code.

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## ACT No. V OF 1870.

*Received the Governor General's assent on the 4th February* 1870.

### An Act to enable the High Courts at the Presidency Towns to deal with costs of petitions for certain monies transferred to Government.

WHEREAS the High Courts of Judicature at Fort William, Madras and Bombay have no power to deal with the costs of petitions under section four of Act No. XXV of 1866 (*to transfer to the Government of India certain securities and monies deposited in the High Courts of Judicature at Fort William, Madras and Bombay*), for payment of certain securities, monies or proceeds transferred to Government; And whereas it is expedient to confer such power upon the said High Courts; It is hereby enacted as follows :—

Preamble.

1. Whenever any of the said Courts shall make an order on any such petition, the Court may direct by whom the whole or any part of the costs of each party are to be paid.

Power to direct by whom costs are to be paid.

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## THE COURT FEES' ACT, 1870.

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### CONTENTS.

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### CHAPTER I.—PRELIMINARY.

SECTION.

1. Short title.
   Extent of Act.
   Commencement of Act.
2. [*Repealed.*]

---

[a] See rules for twenty-two Madras Ports, *Gazette of India*, 14th September 1872, p. 872, *Fort St. George Gazette*, 1st October 1872, p. 1617: Supplementary Rules, *Gazette of India*, 4th October 1873, p. 881, Port Surgeons, *Fort St. George Gazette*, 7th September 1875, p. 1509.

Rules for eight Burmese Ports, *Gazette of India*, 29th March 1873, p. 271

## CHAPTER II.—FEES IN THE HIGH COURTS AND IN THE COURTS OF SMALL CAUSES AT THE PRESIDENCY TOWNS.

SECTION.

3. Levy of fees in High Courts on their original sides.
Levy of fees in Presidency Small Cause Courts.
4. Fees on documents filed, &c., in High Courts in their extraordinary jurisdiction:
in their appellate jurisdiction:
as Courts of reference and revision.
5. Procedure in case of difference as to necessity or amount of fee.

---

## CHAPTER III.—FEES IN OTHER COURTS AND IN PUBLIC OFFICES.

6. Fees on documents filed, &c., in Mofussil Courts or in public offices.
7. Computation of fees payable in certain suits:
i. for money.
ii. for maintenance and annuities.
iii. for other moveable property having a market-value.
iv. (*a*) for moveable property of no market-value.
(*b*) to enforce a right to share in joint family property.
(*c*) for a declaratory decree and consequential relief.
(*d*) for an injunction.
(*e*) for easements.
(*f*) for accounts.
v. for possession of land, houses and gardens.
Proviso as to the Bombay Presidency.
(*e*) for houses and gardens.
vi. to enforce a right of pre-emption.
vii. for interest of assignee of land-revenue.
viii. to set aside an attachment.
ix. to redeem.
to foreclose.
x. for specific performance.
xi. between landlord and tenant.
8. Fee on memorandum of appeal against order relating to compensation.
9. Power to ascertain nett profits or market-value.
10. Procedure where nett profits or market-value wrongly estimated.
11. Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.
12. Decision of questions as to valuation.
13. Refund of fee paid on memorandum of appeal.
14. Refund of fee on application for review of judgment.
15. Refund where Court reverses or modifies its former decision on ground of mistake.
16. Additional fee where respondent takes objection to unappealed part of decree.

SECTION.
17. Multifarious suits.
18. Written examinations of complainants.
19. Exemption of certain documents.

---

## CHAPTER IV.—PROCESS FEES.

20. Rules as to costs of processes.
Confirmation and publication of rules.
21. Tables of process-fees.
22. Number of peons in District and Subordinate Courts.
Number of peons in Mofussil Small Cause Courts.
23. Number of peons in Revenue Courts.
24. Process served under this chapter to be held process served under Civil Procedure Code.

---

## CHAPTER V.—OF THE MODE OF LEVYING FEES.

25. Collection of fees by stamps.
26. Stamps to be impressed or adhesive.
27. Rules for supply, number, renewal and keeping accounts of stamps.
28. Stamping documents inadvertently received.
29. Amended document.
30. Cancellation of stamp.

---

## CHAPTER VI.—MISCELLANEOUS.

31. Repayment of fees paid on applications to criminal Courts.
32. Amendments of Act VIII of 1859, sections 308, 309, 371, 373.
33. Admission in criminal cases of documents for which proper fee has not been paid.
34. Rules for sale of stamps.
35. Power to reduce or remit fees.
36. Saving of fees to certain officers of High Courts.

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## SCHEDULES.

I.—*Ad valorem* fees.
Table of rates of *ad valorem* fees leviable on the institution of suits.
II.—Fixed fees.
III.—Enactments repealed.
Part I. Acts wholly repealed.
Part II. Acts and Regulations partly repealed.

# ACT No. VII of 1870.

*Received the Governor General's assent on the 11th March* 1870.

## CHAPTER I.—Preliminary.

Short title.

This Act may be called "The Court Fees' Act, 1870:"

Extent of Act.

extends to the whole of British India;[a]

Commencement of Act.

nd it shall come into force on the first day of April 1870.

[*Repealed by Act No. XIV of* 1870.]

## CHAPTER II.—Fees in the High Courts and in the Courts of Small Causes at the Presidency Towns.

Levy of fees in High Courts on their original sides.

3. The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by Statute twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four, section fifteen,

or chargeable in each of such Courts under No. eleven of the first, and Nos. seven, twelve, fourteen, sixteen, twenty and twenty-one of the second, schedule to this Act annexed;

Levy of fees in Presidency Small Cause Courts.

and the fees for the time being chargeable in the Courts of Small Causes at the Presidency Towns and their several offices;

shall be collected in manner hereinafter appearing.[b]

Fees on documents filed, &c., in High Courts in their extraordinary jurisdiction.

4. No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited, or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction;

or in the exercise of its extraordinary original criminal jurisdiction;

In their appellate jurisdiction.

or in the exercise of its jurisdiction as regards appeals from the judgment of two or more Judges of the said Court, or of a Division Court;

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;

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[a] It has also been applied to the Province of Mysore (17th June 1870), the Haidarábád Assigned Districts (20th May 1870), the Cantonment of Sikandarábád (21st September 1870), and the Cantonments in Central India (5th May 1870). On the other hand it has been declared inapplicable to proceedings before officers making a settlement in the Santhál Parganas, Santhál Parganas Settlement Regulation 1872, s. 8.

[b] See *Gazette of India*, 19th July 1873, p. 656, as to collecting such fees by adhesive stamps.

or in the exercise of its jurisdiction as a Court of reference or revision; As Courts of reference and revision.

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

5. When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing-officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf. Procedure in case of difference as to necessity or amount of fee.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the first Judge of such Court.

The Chief Justice shall declare who shall be taxing-officer within the meaning of the first paragraph of this section.

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## CHAPTER III.—Fees in other Courts and in Public Offices.

6. Except in the Courts hereinbefore mentioned, no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document. Fees on documents filed, &c., in Mofussil Courts or in public offices.

7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:— Computation of fees payable in certain suits.

i. In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)—according to the amount claimed: for money:

ii. In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such for maintenance and annuities:

value shall be deemed to be ten times the amount claimed to be payable for one year:

for other moveable property having a market-value:

iii. In suits for moveable property other than money, where the subject-matter has a market-value——according to such value at the date of presenting the plaint:

iv. In suits—

for moveable property of no market-value:

(*a*) for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

to enforce a right to share in joint family property:

(*b*) to enforce the right to share in any property on the ground that it is joint family property,

for a declaratory decree and consequential relief:

(*c*) to obtain a declaratory decree, or order, where consequential relief is prayed,

for an injunction:

(*d*) to obtain an injunction,

for easements:

(*e*) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

for accounts:

(*f*) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought, and the provisions of the Code of Civil Procedure, section thirty-one, shall apply as if, for the word 'claim,' the words 'relief sought' were substituted.

for possession of land, houses, and gardens.

v. In suits for the possession of land, houses and gardens—according to the value of the subject-matter; and such value shall be deemed to be—

where the subject-matter is land, and—

(*a*) where the land forms an entire, or a definite share of an estate, paying annual revenue to Government,

or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue,

and such revenue is permanently settled—

ten times the revenue so payable:

(*b*) where the land forms an entire estate, or a definite share of an estate paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid;

and such revenue is settled, but not permanently—

five times the revenue so payable:—

(*c*) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and nett profits have arisen from the land during the year next before the date of presenting the plaint—

fifteen times such nett profits:

but where no such nett profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood:

(*d*) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate, and is not separately assessed as abovementioned—the market-value of the land:

Provided that, in the territories subject to the Governor of Bombay in Council, the value of the land shall be deemed to be— Proviso as to Bombay Presidency.

(1) where the land is held on settlement for a period not exceeding thirty years, and pays the full assessment to Government—a sum equal to five times the survey-assessment;

(2) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to ten times the survey-assessment; and

(3) where the whole or any part of the annual survey-assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten times the assessment, or the portion of assessment, so remitted:

*Explanation.*—The word 'estate,' as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or a farmer or ryot shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue.

(*e*) Where the subject-matter is a house or garden—according to the market-value of the house or garden: for houses and gardens:

vi. In suits to enforce a right of pre-emption according to the value (computed in accordance with paragraph v of this section) of the land, house or garden in respect of which the right is claimed: to enforce a right of pre-emption:

vii. In suits for the interest of an assignee of land-revenue—fifteen times his nett profits as such for the year next before the date of presenting the plaint: for interest of assignee of land-revenue:

to set aside an attachment:

viii. In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached:

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest:

to redeem:

ix. In suits against a mortgagee for the recovery of the property mortgaged,

to foreclose:

and in suits by a mortgagee to foreclose the mortgage,

or, where the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money expressed to be secured by the instrument of mortgage:

for specific performance:

x. In suits for specific performance—

(*a*) of a contract of sale—according to the amount of the consideration:

(*b*) of a contract of mortgage—according to the amount agreed to be secured:

(*c*) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term:

(*d.*) of an award—according to the amount or value of the property in dispute:

between landlord and tenant.

xi. In the following suits between landlord and tenant:

(*a*) for the delivery by a tenant of the counterpart of a lease,

(*b*) to enhance the rent of a tenant having a right of occupancy,

(*c*) for the delivery by a landlord of a lease,

(*d*) to contest a notice of ejectment,

(*e*) to recover the occupancy of land from which a tenant has been illegally ejected by the landlord, and

(*f*) for abatement of rent—

according to the amount of the rent of the land to which the suit refers, payable for the year next before the date of presenting the plaint.

Fee on memorandum of appeal against order relating to compensation.

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes, shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

Power to ascertain nett profits or market-value.

9. If the Court sees reason to think that the annual nett profits or the market-value of any such land, house or garden as is mentioned in section seven, paragraphs five and six, have or has been wrongly estimated, the Court

may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

Procedure where nett profits or market-value wrongly estimated.

10. i. If in the result of any such investigation the Court finds that the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may in its discretion refund the excess paid as such fee : but if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated :

ii. In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed :

iii. Section one hundred and eighty of the Code of Civil Procedure shall be construed as if the words 'the market-value of any property or' were inserted after the word 'ascertaining,' and as if the words 'or annual nett profits' were inserted after the word 'damages.'

Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.

11. In suits for mesne profits or for immoveable property and mesne profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

Decision of questions as to valuation.

12. i. Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal, shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit :

ii. But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such

fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section ten, paragraph ii, shall apply.

Refund of fee paid on memorandum of appeal.

13. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in section three hundred and fifty-one of the same Code, for a second decision by the lower Court, the appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal :

Provided that, if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

Refund of fee on application for review of judgment.

14. Where an application for a review of judgment is presented on or after the nineteenth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

Refund where Court reverses or modifies its former decision on ground of mistake.

15. Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the application[a] as exceeds the fee payable on any other application to such Court under the second schedule to this Act, No. one, clause (*b*) or clause (*d*).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

Additional fee where respondent takes objection to unappealed part of decree.

16. When any appeal is presented to a Civil Court, not against the whole of a decision, but only against so much thereof as relates to a portion of the subject-matter of the suit, and, on the hearing of such appeal, the respondent takes, under section three hundred and forty-eight of the Code of Civil Procedure, an objection to any part of the said decision other than the part appealed against, the Court shall not hear such objection until the respondent

[a] See Act No XX of 1870.

shall have paid the additional fee which would have been payable had the appeal comprised the part of the decision so objected to.

**Multifarious suits.**

17. Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, section nine.

**Written examinations of complainants.**

18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure; the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment.

**Exemption of certain documents.**

19. Nothing contained in this Act shall render the following documents chargeable with any fee:—

i. Power-of-attorney to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer or private of Her Majesty's army not in civil employment.

ii. Declarations mentioned in section one hundred and eighteen and section one hundred and sixty-four of the Code of Civil Procedure.

iii. Written statements called for by the Court after the first hearing of a suit.

iv. Plaint presented to a Military Court of Requests and petition for execution of a decree of such Court.

v. Plaints in suits tried by Village Munsifs in the Presidency of Fort St. George.

vi. Plaints and processes in suits before District Panchâyats in the same Presidency.

vii. Plaints in suits before Collectors under Madras Regulation XII of 1816.

viii. Probate of a will, letters of administration, and certificate mentioned in the first schedule to this Act annexed, No. twelve, where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees.

ix. Application or petition to a Collector or other officer making a settlement of land-revenue, or to a Board of Revenue, or a Commis-

sioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.

x. Application relating to a supply for irrigation of water belonging to Government.

xi. Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled but not permanently.

xii. Application for service of notice of relinquishment of land or of enhancement of rent.

xiii. Written authority to an agent to distrain.

xiv. First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

xv. Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

xvi. Petition, application, charge, or information respecting any offence, when presented, made or laid to or before a Police officer, or to or before the Heads of Villages or the Village Police in the territories respectively subject to the Governors in Council of Madras and Bombay.

xvii. Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.

xviii. Complaint of a public servant (as defined in the Indian Penal Code), a municipal officer or servant of a Railway Company.

xix. Application for permission to cut timber in Government forests, or otherwise relating to such forests.

xx. Application for the payment of money due by Government to the applicant.

xxi. Petition of appeal against the chaukídárí assessment under Act No. XX of 1856, or against any municipal tax.

xxii. Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.

xxiii. Petitions presented to the Special Commissioner appointed under Bengal Act No. II of 1869 (*to ascertain, regulate and record certain tenures in Chutia Nâgpur*).

xxiv. Petitions under the[a] Indian Christian Marriage Act, 1872, sections forty-five and forty-eight.

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## CHAPTER III-A.—PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION.

Relief where too high a Court-fee has been paid.

**19A.** Where any person on applying for the probate of a will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a Court-fee thereon, if within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue Authority of the Province in which the probate or letters has or have been granted,

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said Authority may—

(*a*) cancel the stamp on the probate or letters, if such stamp has not been already cancelled;

(*b*) substitute another stamp for denoting the Court-fee which should have been paid thereon; and

(*c*) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.[b]

Relief where debts due from a deceased person have been paid out of his estate.

**19B.** Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount of value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less Court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been reco-

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[a] See Act No. XV of 1872, section 2.

[b] From 55 Geo. III, c. 184, s 40.

vered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances. [a]

Relief in case of several grants.

19C. Whenever such a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate;

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

Probates declared valid as to trust-property though not covered by Court-fee.

19D. The probate of the will, or the letters of administration of the effects, of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any moveable or immoveable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a Court-fee was paid on such probate or letters of administration. [b]

Provision for case where too low a Court-fee has been paid on probates, &c.

19E. Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a Court-fee thereon, the Chief Controlling Revenue Authority of the Province in which the probate or letters has or have been granted, may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full Court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or if it or they is or are produced after one year from such date, of twenty times, such proper Court-fee, without any deduction of the Court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a

[a] From 55 Geo. III, c. 184, s. 51.
[b] 48 Geo. III, c. 149, s. 35.

Court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper Court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon. [a]

Administrator to give proper security before letters stamped under section 19 E.

**19F.** In case of letters of administration on which too low a Court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until the Administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained. [b]

Executors, &c., not paying full Court-fee on probates, &c., within six months after discovery of underpayment.

**19G.** Where too low a Court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months after the first day of April 1875, or after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the Court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper Court-fee. [c]

Section 19A to 19G applied to certificates under Acts XL of 1858 and XX of 1864.

**19H.** The provisions of sections 19A to 19G (both inclusive) shall, *mutatis mutandis*, apply to certificates granted under Act No. XL of 1858 (*for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal*) or Act XX of 1864 (*for making better provision for the care of the persons and property of Minors in the Presidency of Bombay*) and to the holders of such certificates.

## CHAPTER IV.—PROCESS FEES.

Rules as to costs of processes.

**20.** The High Court shall, as soon as may be, make rules as to the following matters:—

i. the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other civil and revenue Courts established within the local limits of such jurisdiction:

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[a] 55 Geo. III, c. 184, s. 41.
[b] 55 Geo. III, c. 184, s. 42.
[c] 55 Geo. III, c. 184, s. 43.

ii. the fees chargeable for serving and executing processes issued by the criminal Courts established within such limits in the case of offences other than offences for which police officers may arrest without a warrant; and

iii. the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may from time to time alter and add to the rules so made.

Confirmation and publication of rules.

All such rules, alterations and additions shall, after being confirmed by the Local Government, and sanctioned by the Governor General of India in Council, be published in the local official Gazette, and shall thereupon have the force of law.[a]

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

Tables of process-fees.

21. A Table in the English and Vernacular languages, showing the fee chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

Number of peons in District and subordinate Courts.

22. Subject to rules to be made by the High Court[b] and approved by the Local Government and the Governor General of India in Council,

every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto,

Number of peons in Mofussil Small Cause Courts.

and for the purposes of this section, every Court of Small Causes established under Act No. XI of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*) shall be deemed to be subordinate to the Court of the District Judge.

Number of peons in Revenue Courts.

23. Subject to rules to be framed by the Chief Controlling Revenue Authority[c] and approved by the Local Government and the Governor General of India in Council, every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

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[a] See *Calcutta Gazette*, 25th February 1874, p. 476: 10th June 1874, p. 979. *Fort St. George Gazette*, 5th August 1873, p. 1255, and 30th June 1874, p. 1005. *Bombay Government Gazette*, 25th June 1874, p. 530, and 8th July 1875, p. 687. *Panjáb Govt. Gazette*, 5th June 1873, p. 309. *Central Provinces Gazette*, 22nd February 1873, Part IA, p. 33. *British Burma Gazette*, 27th September 1873, Part II, p. 183.

[b] See *Fort St George Gazette*, 5th August 1873, p. 1257.

[c] See *Calcutta Gazette*, 22nd January 1873, p. 146. *Fort St. George Gazette*, 5th August 1873, p. 1257. *Panjáb Gazette*, 29th May 1873, p. 296.

**24.** Every process served or executed under this chapter shall be held to be a process within the meaning of section one hundred and eighty-eight of the Code of Civil Procedure, and of section two of Act No. XXIII of 1861 (*to amend Act VIII of* 1859).

Process served under this chapter to be held process served under Civil Procedure Code.

## CHAPTER V.—Of the Mode of levying Fees.

**25.** All fees referred to in section three or chargeable under this Act shall be collected by stamps.

Collection of fees by stamps.

**26.** The stamps used to denote any fee chargeable under this Act shall be impressed, or adhesive, or partly impressed and partly adhesive, as the Governor General of India in Council may, by notification in the *Gazette of India*, from time to time direct.

Stamps to be impressed or adhesive.

**27.** The Local Government may, from time to time, make rules for regulating—

(*a*) the supply of stamps to be used under this Act,

(*b*) the number of stamps to be used for denoting any fee chargeable under this Act,

(*c*) the renewal of damaged or spoiled stamps, and

(*d*) the keeping accounts of all stamps used under this Act:

Provided that, in the case of stamps used under section three in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.[a]

Rules for supply, number, renewal and keeping accounts of stamps.

**28.** No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

But if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

Stamping documents inadvertently received.

**29.** Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

Amended document.

[a] See *Calcutta Gazette*, 2nd April 1873, p. 431: *Bombay Government Gazette*, 11th December 1873, p. 1,010: *North-Western Provinces Government Gazette*, 21st December 1872, p. 1,374: *Panjáb Government Gazette*, 11th June 1874, p. 183: *Central Provinces Gazette*, 3rd August 1872, Pat I A, p. 11: *British Burma Gazette*, 24th May 1873, Part II, p. 112.

Cancellation of stamp.

**30.** No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

## CHAPTER VI.—MISCELLANEOUS.

Repayment of fees paid on applications to criminal Courts.

**31.** i. Whenever an application or petition containing a complaint or charge of an offence, other than an offence for which Police officers may arrest without warrant, is presented to a criminal Court, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee paid on such application or petition.

ii. In the case mentioned in section eighteen, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, if any, paid by the latter for the examination.

iii. When the complainant has paid fees for serving processes in either of the cases mentioned in the first and second paragraphs of this section, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay such fees to the complainant.

iv. All fees ordered to be repaid under this section may be recovered as if they were fines imposed by the Court.

Amendments of Act VIII of 1859, sections 308, 309, 371, 373.

**32.** The Code of Civil Procedure, sections three hundred and eight and three hundred and nine, shall be read as if, for the words 'stamp-duty' and 'stamps,' the words and figures 'fees chargeable under the Court Fees' Act, 1870,' were substituted; section three hundred and seventy-one of the same Code shall be read as if, for the words 'a stamp of the value,' the words 'the payment of the fee,' were substituted; and section three hundred and seventy-three of the same Code shall be read as if, for the words 'on a stamp paper of the value,' the words 'and shall be chargeable with the fee,' were substituted; and as if, for the words 'for the stamps,' the words 'the fees,' were substituted.[a]

Admission in criminal cases of documents for which proper fee has not been paid.

**33.** Whenever the filing or exhibition in a criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section four or section six shall be deemed to prohibit such filing or exhibition.

[a] See Act No. XVI of 1870.

34. In the General Stamp Act, 1869, section forty-eight shall be read as if, for the words and figures 'Act No. XXVI of 1867 *(to amend the law relating to Stamp Duties)*,' the words and figures 'The Court Fees' Act, 1870,' were substituted. Rules for sale of stamps.

35. The Governor General of India in Council may from time to time, by notification in the *Gazette of India*, reduce or remit, in the whole or in any part of British India, all or any of the fees mentioned in the first and second schedules to this Act annexed,[a] Power to reduce or remit fees.

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[a] In exercise of this power fees on the following documents have been remitted :—

Copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of Government before any Criminal Court, and copies of all documents which any such Advocate, pleader or other person is required to take in connection with any such trial or investigation for the use of any Court or Magistrate—No. 4366, dated 21st October 1870.

Bonds and other instruments executed by salaried officers of Government to secure the due performance of their duties and given by the direction of any Court or executive authority [see Court Fees' Act, Schedule II, No. 6.]—No. 47, dated 6th January 1871.

Plaints, petitions for execution and memoranda of appeal filed in claims under Madras Regulation VI of 1831, except plaints or petitions for execution, which are chargeable with a fee of 8 annas each and memoranda of appeal, which are chargeable with a fee of 2 rupees each." No. 839, dated 31st January 1872.

Copies of final sentences or orders passed by Criminal Courts, which parties desirous of appealing from such sentences or orders are required by section 416 of the Code of Criminal Procedure to file with their petition of appeal, provided that the party desirous of appealing is in confinement under the operation of the sentence or order at the time that he applies for a copy of the same. This exemption also extends under the same circumstances to copies of the judgment or reasons for passing or making such sentence or order as above—No. 2520, dated 5th April 1872.

Copies of settlement records furnished to landholders and cultivators, but not certified by the signature of any public officer to be true copies. (This does not apply to copies of judicial proceedings).—No. 1906, dated 9th August 1872.

Petitions of appeal presented to Revenue Officers in accordance with section 55 of Madras Act IV of 1871—No. 302, dated 17th January 1873.

In every case in which the fee payable on the institution of a suit to enhance the rent of a tenant having a right of occupancy would, under the said Act, exceed the sum of eight annas, such fee shall be reduced to the sum of eight annas, whether such suit be brought against the tenant separately under Act X of 1859 or against several tenants collectively under section 11 of Act XIV of 1863; provided that such suit is brought on or before the 1st day of May of the year following the agricultural year in which the revised assessments take effect in respect of the land on which the enhancement is sought. This Notification applies only to the districts of the North-Western Provinces in which settlement operations are now in progress, or have lately been concluded, or may hereafter be set on foot—Department of Agriculture, Revenue and Commerce, No. 451, dated 5th June 1873, p. 520.

1. Copy or translation of the charge furnished to an accused person under section 199 of the Code of Criminal Procedure. 2. Copies of depositions furnished to accused persons under section 201 of the said Code. 3. Copy of the judgment or order passed by a Criminal Court, and of a Judge's charge to the Jury, furnished under section 276 of the said Code to any person affected by such judgment or order, provided that such person is in jail, or the Court, for some special reason, sees fit to grant such copy free of expense. 4. Copies of the examination of witnesses given to accused persons under section 357 of the said Code. 5. Copies of charges given to accused persons under section 446 of the said Code. 6. Copies of orders of maintenance given under section 538 of the said Code. Home Department, Judicial, No. 996, dated 6th June 1873.

Applications presented to a Collector for refund of the amount paid to Government for stamped paper, which has become spoiled or unfit for use, or is no longer required for use, and on

and may in like manner cancel or vary such order.

Saving of fees to certain officers of High Courts.

36. Nothing in chapters II and V of this Act applies to the commission payable to the Accountant General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

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## SCHEDULE I.

*Ad valorem fees.*

| NUMBER. | | PROPER FEE. |
|---|---|---|
| 1. Plaint or memorandum of appeal (not otherwise provided for in this Act), presented to any Civil or Revenue Court, except those mentioned in section three* | When the amount or value of the subject-matter in dispute does not exceed five rupees ... ... | Six annas. |
| | When such amount or value exceeds five rupees, For every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees... ... ... | Six annas. |

application for renewal of stamp paper which has been spoiled or unfit for use—No. 3816, dated 19th December 1873.

The fee payable (*a*) on the plaint in every suit instituted in the Province of Oudh after 30th January 1874, to obtain a declaratory decree in respect of an under-proprietary tenure where no consequential relief is prayed; (*b*) on every appeal presented after that date in any such suit, whether instituted before or after the same date, has been reduced to eight annas. No. 801, dated 30th January 1874.

The proper fee to be paid upon the deposit in any Court in the territories under the Government of the Lieutenant-Governor of Bengal of rent not exceeding the sum of fifteen rupees, shall be as follows:—

| | *Proper Fee.* |
|---|---|
| If the amount deposited does not exceed Rs. 2·8 ... | ... One anna. |
| If the amount deposited exceeds Rs. 2-8 but does not exceed Rs. 5 | .. Two annas. |
| If the amount deposited exceeds Rs. 5 but does not exceed Rs. 10 | ... Four annas. |
| If the amount exceeds Rs 10 but does not exceed Rs. 15 ... | ... Six annas. |

No. 1070, dated 12th February 1874.

Applications in writing relating exclusively to the purchase of salt, the property of Government—No. 1293, dated 20th February 1874.

Plaints in summary suits brought before Collectors under Madras Act VIII of 1865—No. 1511, dated 6th March 1874.

Throughout the territories subject to the Governor of Fort St. George in Council, the fees payable in suits by Government ryots for the recovery of land sold for arrears of revenue, shall be reduced to the amount which would be payable if the value of the subject-matter were only the rent of the land payable for the year next before the date of presenting the plaint—No. 4685, dated 31st July 1874.

Copy of the judgment or order given by a Criminal Court under section 464, Code of Criminal Procedure, to the accused person affected by such judgment or order, provided that such person is in jail, or that the Court for some special reason sees fit to give such copy free of cost—No. 7317, dated 18th December 1874.

* To ascertain the proper fee leviable on the institution of a suit, see the Table annexed to this schedule.

SCHEDULE I.—continued.

*Ad valorem fees.*

| Number. | | Proper Fee. |
|---|---|---|
| 1. Plaint, &c.—(*continued*). | When such amount or value exceeds one hundred rupees, For every ten rupees, or part thereof in excess of one hundred rupees, up to one thousand rupees .. | Twelve annas. |
| | When such amount or value exceeds one thousand rupees, For every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees | Five rupees. |
| | When such amount or value exceeds five thousand rupees, For every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees ... | Ten rupees. |
| | When such amount or value exceeds ten thousand rupees, For every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees .. ... ... | Fifteen rupees. |
| | When such amount or value exceeds twenty thousand rupees, For every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees ... | Twenty rupees. |
| | When such amount or value exceeds thirty thousand rupees, For every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees ... ... | Twenty rupees. |
| | When such amount or value exceeds fifty thousand rupees, For every five thousand rupees, or part thereof, in excess of fifty thousand rupees ... ... | Twenty-five rupees. |

SCHEDULE I—continued.

*Ad valorem fees.*

| NUMBER. | | PROPER FEE. |
|---|---|---|
| | Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees ... ... | |
| 2. Plaint in a suit for possession under Act No. XIV of 1859 (*to provide for the limitation of suits*), section fifteen.<br>3. [*Repealed by Act No. VIII of* 1871]. | ... ... ... | A fee of one-half the amount prescribed in the foregoing scale. |
| 4. Application for review of judgment, if presented on or after the ninetieth day from the date of the decree. | ... ... ... | The fee leviable on the plaint or memorandum of appeal. |
| 5. Application for review of judgment if presented before the ninetieth day from the date of the decree. | ... ... ... | One-half of the fee leviable on the plaint or memorandum of appeal. |
| 6. Copy or translation of a judgment or order not being, or having the force of, a decree. | When such judgment or order is passed by any civil Court other than a High Court, or by the presiding officer of any revenue Court or office, or by any other Judicial or Executive Authority— | |
| | (*a*).—If the amount or value of the subject-matter is fifty or less than fifty rupees ... | Four annas. |
| | (*b*).—If such amount or value exceeds fifty rupees ... | Eight annas. |
| | When such judgment or order is passed by a High Court ... | One rupee. |

SCHEDULE I—continued.

*Ad valorem fees.*

| NUMBER. | | PROPER FEE. |
|---|---|---|
| 7. Copy of a decree or order having the force of a decree. | When such decree or order is made by any civil Court other than a High Court, or by any revenue Court— | |
| | (*a*).—If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees ... | Eight annas. |
| | (*b*).—If such amount or value exceeds fifty rupees ... | One rupee. |
| | When such decree or order is made by a High Court ... ... | Four rupees. |
| 8. Copy of any document liable to stamp-duty under the General Stamp Act, 1869, when left by any party to a suit or proceeding in place of the original withdrawn. | (*a*).—When the stamp-duty chargeable on the original does not exceed eight annas. | The amount of the duty chargeable on the original. |
| | (*b*).—In any other case ... | Eight annas. |
| 9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or office, or from the office of any chief officer charged with the executive administration of a Division. | For every three hundred and sixty words or fraction of three hundred and sixty words ... | Eight annas. |
| 10. Certificate of administration granted under Act No. XL of 1858 (*for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal*), or under Act No. XX of | If the amount or value of the property in respect to which such certificate is granted does not exceed five hundred rupees ... | Five rupees. |
| | If such amount or value exceeds five hundred rupees but not one thousand rupees ... ... | Ten rupees. |

SCHEDULE I—continued.

*Ad valorem fees.*

| NUMBER. | | PROPER FEE. |
|---|---|---|
| 1864 (*for making better provision for the care of the persons and property of minors in the Presidency of Bombay*). | And for every one thousand rupees, or part thereof, in excess of one thousand rupees ... ... | Five rupees. |
| 11. Probate of a will or letters of administration with or without will annexed.<br>12. Certificate granted under Act No. XXVII of 1860 (*for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*), or under Bombay Regulation VIII of 1827 (*to provide for the formal recognition of Heirs, Executors, and Administrators, and for the appointment of Administrators and Managers of Property by the Courts*). | If the amount or value of the property[a] in respect of which the probate or letters or certificate shall be granted exceeds one thousand rupees. | Two per centum on such amount or value. |
| | NOTE.—The person to whom any such certificate is granted, or his representative, shall, after the expiration of twelve months from the date of such certificate and thereafter whenever the Court granting such certificate requires him so to do, file a statement on oath of all monies recovered or realized by him under such certificate. | |

[a] i.e., property of or to which the deceased was possessed or entitled, *In the goods of George*, 6 Beng. Appendix, 138.

SCHEDULE I—continued.

*Ad valorem fees.*

| NUMBER. | | PROPER FEE. |
|---|---|---|
| | If the monies so recovered or realized exceed the amount of debts or other property as sworn to by the person to whom the certificate is granted, the Court may cancel the same and order such person to take out a fresh certificate and pay the fee prescribed by this schedule for such excess.<br>In default of filing such statement within the time allowed, the Court may cancel the certificate. | |

*Table of rates of ad valorem fees leviable on the institution of suits.*

| When the amount or value of the subject-matter exceeds | But does not exceed | Proper Fee. |
|---|---|---|
| Rs. | Rs. | Rs. A. P. |
| 0 | 5 | 0 6 0 |
| 5 | 10 | 0 12 0 |
| 10 | 15 | 1 2 0 |
| 15 | 20 | 1 8 0 |
| 20 | 25 | 1 14 0 |
| 25 | 30 | 2 4 0 |
| 30 | 35 | 2 10 0 |
| 35 | 40 | 3 0 0 |
| 40 | 45 | 3 6 0 |
| 45 | 50 | 3 12 0 |
| 50 | 55 | 4 2 0 |
| 55 | 60 | 4 8 0 |
| 60 | 65 | 4 14 0 |
| 65 | 70 | 5 4 0 |
| 70 | 75 | 5 10 0 |
| 75 | 80 | 6 0 0 |
| 80 | 85 | 6 6 0 |

[a] That the certificate liable to cancellation remains in force until cancelled, *see* 6 Madras, 135.

SCHEDULE I—continued.

*Table of rates of ad valorem fees, &c.*—continued.

| When the amount or value of the subject-matter exceeds | But does not exceed | Proper Fee. | | |
|---|---|---|---|---|
| Rs. | Rs. | Rs. | A. | P. |
| 85 | 90 | 6 | 12 | 0 |
| 90 | 95 | 7 | 2 | 0 |
| 95 | 100 | 7 | 8 | 0 |
| 100 | 110 | 8 | 4 | 0 |
| 110 | 120 | 9 | 0 | 0 |
| 120 | 130 | 9 | 12 | 0 |
| 130 | 140 | 10 | 8 | 0 |
| 140 | 150 | 11 | 4 | 0 |
| 150 | 160 | 12 | 0 | 0 |
| 160 | 170 | 12 | 12 | 0 |
| 170 | 180 | 13 | 8 | 0 |
| 180 | 190 | 14 | 4 | 0 |
| 190 | 200 | 15 | 0 | 0 |
| 200 | 210 | 15 | 12 | 0 |
| 210 | 220 | 16 | 8 | 0 |
| 220 | 230 | 17 | 4 | 0 |
| 230 | 240 | 18 | 0 | 0 |
| 240 | 250 | 18 | 12 | 0 |
| 250 | 260 | 19 | 8 | 0 |
| 260 | 270 | 20 | 4 | 0 |
| 270 | 280 | 21 | 0 | 0 |
| 280 | 290 | 21 | 12 | 0 |
| 290 | 300 | 22 | 8 | 0 |
| 300 | 310 | 23 | 4 | 0 |
| 310 | 320 | 24 | 0 | 0 |
| 320 | 330 | 24 | 12 | 0 |
| 330 | 340 | 25 | 8 | 0 |
| 340 | 350 | 26 | 4 | 0 |
| 350 | 360 | 27 | 0 | 0 |
| 360 | 370 | 27 | 12 | 0 |
| 370 | 380 | 28 | 8 | 0 |
| 380 | 390 | 29 | 4 | 0 |
| 390 | 400 | 30 | 0 | 0 |
| 400 | 410 | 30 | 12 | 0 |
| 410 | 420 | 31 | 8 | 0 |
| 420 | 430 | 32 | 4 | 0 |
| 430 | 440 | 33 | 0 | 0 |
| 440 | 450 | 33 | 12 | 0 |

SCHEDULE I—continued.

*Table of rates of ad valorem fees, &c.*—continued.

| When the amount or value of the subject-matter exceeds | But does not exceed | Proper Fee. | | |
|---|---|---|---|---|
| Rs. | Rs. | Rs. | A. | P. |
| 450 | 460 | 34 | 8 | 0 |
| 460 | 470 | 35 | 4 | 0 |
| 470 | 480 | 36 | 0 | 0 |
| 480 | 490 | 36 | 12 | 0 |
| 490 | 500 | 37 | 8 | 0 |
| 500 | 510 | 38 | 4 | 0 |
| 510 | 520 | 39 | 0 | 0 |
| 520 | 530 | 39 | 12 | 0 |
| 530 | 540 | 40 | 8 | 0 |
| 540 | 550 | 41 | 4 | 0 |
| 550 | 560 | 42 | 0 | 0 |
| 560 | 570 | 42 | 12 | 0 |
| 570 | 580 | 43 | 8 | 0 |
| 580 | 590 | 44 | 4 | 0 |
| 590 | 600 | 45 | 0 | 0 |
| 600 | 610 | 45 | 12 | 0 |
| 610 | 620 | 46 | 8 | 0 |
| 620 | 630 | 47 | 4 | 0 |
| 630 | 640 | 48 | 0 | 0 |
| 640 | 650 | 48 | 12 | 0 |
| 650 | 660 | 49 | 8 | 0 |
| 660 | 670 | 50 | 4 | 0 |
| 670 | 680 | 51 | 0 | 0 |
| 680 | 690 | 51 | 12 | 0 |
| 690 | 700 | 52 | 8 | 0 |
| 700 | 710 | 53 | 4 | 0 |
| 710 | 720 | 54 | 0 | 0 |
| 720 | 730 | 54 | 12 | 0 |
| 730 | 740 | 55 | 8 | 0 |
| 740 | 750 | 56 | 4 | 0 |
| 750 | 760 | 57 | 0 | 0 |
| 760 | 770 | 57 | 12 | 0 |
| 770 | 780 | 58 | 8 | 0 |
| 780 | 790 | 59 | 4 | 0 |
| 790 | 800 | 60 | 0 | 0 |
| 800 | 810 | 60 | 12 | 0 |
| 810 | 820 | 61 | 8 | 0 |
| 820 | 830 | 62 | 4 | 0 |

## SCHEDULE I—continued.

*Table of rates of ad valorem fees, &c.*—continued.

| When the amount or value of the subject-matter exceeds | But does not exceed | Proper Fee. | | |
|---|---|---|---|---|
| Rs. | Rs. | Rs. | A. | P. |
| 830 | 840 | 63 | 0 | 0 |
| 840 | 850 | 63 | 12 | 0 |
| 850 | 860 | 64 | 8 | 0 |
| 860 | 870 | 65 | 4 | 0 |
| 870 | 880 | 66 | 0 | 0 |
| 880 | 890 | 66 | 12 | 0 |
| 890 | 900 | 67 | 8 | 0 |
| 900 | 910 | 68 | 4 | 0 |
| 910 | 920 | 69 | 0 | 0 |
| 920 | 930 | 69 | 12 | 0 |
| 930 | 940 | 70 | 8 | 0 |
| 940 | 950 | 71 | 4 | 0 |
| 950 | 960 | 72 | 0 | 0 |
| 960 | 970 | 72 | 12 | 0 |
| 970 | 980 | 73 | 8 | 0 |
| 980 | 990 | 74 | 4 | 0 |
| 990 | 1,000 | 75 | 0 | 0 |
| 1,000 | 1,100 | 80 | 0 | 0 |
| 1,100 | 1,200 | 85 | 0 | 0 |
| 1,200 | 1,300 | 90 | 0 | 0 |
| 1,300 | 1,400 | 95 | 0 | 0 |
| 1,400 | 1,500 | 100 | 0 | 0 |
| 1,500 | 1,600 | 105 | 0 | 0 |
| 1,600 | 1,700 | 110 | 0 | 0 |
| 1,700 | 1,800 | 115 | 0 | 0 |
| 1,800 | 1,900 | 120 | 0 | 0 |
| 1,900 | 2,000 | 125 | 0 | 0 |
| 2,000 | 2,100 | 130 | 0 | 0 |
| 2,100 | 2,200 | 135 | 0 | 0 |
| 2,200 | 2,300 | 140 | 0 | 0 |
| 2,300 | 2,400 | 145 | 0 | 0 |
| 2,400 | 2,500 | 150 | 0 | 0 |
| 2,500 | 2,600 | 155 | 0 | 0 |
| 2,600 | 2,700 | 160 | 0 | 0 |
| 2,700 | 2,800 | 165 | 0 | 0 |
| 2,800 | 2,900 | 170 | 0 | 0 |
| 2,900 | 3,000 | 175 | 0 | 0 |
| 3,000 | 3,100 | 180 | 0 | 0 |

## SCHEDULE I—continued.

*Table of rates of ad valorem fees, &c.*—continued.

| When the amount or value of the subject-matter exceeds | But does not exceed | Proper Fee. | | |
|---|---|---|---|---|
| Rs. | Rs. | Rs. | A. | P. |
| 3,100 | 3,200 | 185 | 0 | 0 |
| 3,200 | 3,300 | 190 | 0 | 0 |
| 3,300 | 3,400 | 195 | 0 | 0 |
| 3,400 | 3,500 | 200 | 0 | 0 |
| 3,500 | 3,600 | 205 | 0 | 0 |
| 3,600 | 3,700 | 210 | 0 | 0 |
| 3,700 | 3,800 | 215 | 0 | 0 |
| 3,800 | 3,900 | 220 | 0 | 0 |
| 3,900 | 4,000 | 225 | 0 | 0 |
| 4,000 | 4,100 | 230 | 0 | 0 |
| 4,100 | 4,200 | 235 | 0 | 0 |
| 4,200 | 4,300 | 240 | 0 | 0 |
| 4,300 | 4,400 | 245 | 0 | 0 |
| 4,400 | 4,500 | 250 | 0 | 0 |
| 4,500 | 4,600 | 255 | 0 | 0 |
| 4,600 | 4,700 | 260 | 0 | 0 |
| 4,700 | 4,800 | 265 | 0 | 0 |
| 4,800 | 4,900 | 270 | 0 | 0 |
| 4,900 | 5,000 | 275 | 0 | 0 |
| 5,000 | 5,250 | 285 | 0 | 0 |
| 5,250 | 5,500 | 295 | 0 | 0 |
| 5,500 | 5,750 | 305 | 0 | 0 |
| 5,750 | 6,000 | 315 | 0 | 0 |
| 6,000 | 6,250 | 325 | 0 | 0 |
| 6,250 | 6,500 | 335 | 0 | 0 |
| 6,500 | 6,750 | 345 | 0 | 0 |
| 6,750 | 7,000 | 355 | 0 | 0 |
| 7,000 | 7,250 | 365 | 0 | 0 |
| 7,250 | 7,500 | 375 | 0 | 0 |
| 7,500 | 7,750 | 385 | 0 | 0 |
| 7,750 | 8,000 | 395 | 0 | 0 |
| 8,000 | 8,250 | 405 | 0 | 0 |
| 8,250 | 8,500 | 415 | 0 | 0 |
| 8,500 | 8,750 | 425 | 0 | 0 |
| 8,750 | 9,000 | 435 | 0 | 0 |
| 9,000 | 9,250 | 445 | 0 | 0 |
| 9,250 | 9,500 | 455 | 0 | 0 |
| 9,500 | 9,750 | 465 | 0 | 0 |

## SCHEDULE I—continued.

*Table of rates of ad valorem fees, &c.,*—continued.

| When the amount or value of the subject-matter exceeds | But does not exceed | Proper Fee. | | |
|---|---|---|---|---|
| Rs. | Rs. | Rs. | A. | P. |
| 9,750 | 10,000 | 475 | 0 | 0 |
| 10,000 | 10,500 | 490 | 0 | 0 |
| 10,500 | 11,000 | 505 | 0 | 0 |
| 11,000 | 11,500 | 520 | 0 | 0 |
| 11,500 | 12,000 | 535 | 0 | 0 |
| 12,000 | 12,500 | 550 | 0 | 0 |
| 12,500 | 13,000 | 565 | 0 | 0 |
| 13,000 | 13,500 | 580 | 0 | 0 |
| 13,500 | 14,000 | 595 | 0 | 0 |
| 14,000 | 14,500 | 610 | 0 | 0 |
| 14,500 | 15,000 | 625 | 0 | 0 |
| 15,000 | 15,500 | 640 | 0 | 0 |
| 15,500 | 16,000 | 655 | 0 | 0 |
| 16,000 | 16,500 | 670 | 0 | 0 |
| 16,500 | 17,000 | 685 | 0 | 0 |
| 17,000 | 17,500 | 700 | 0 | 0 |
| 17,500 | 18,000 | 715 | 0 | 0 |
| 18,000 | 18,500 | 730 | 0 | 0 |
| 18,500 | 19,000 | 745 | 0 | 0 |
| 19,000 | 19,500 | 760 | 0 | 0 |
| 19,500 | 20,000 | 775 | 0 | 0 |
| 20,000 | 21,000 | 795 | 0 | 0 |
| 21,000 | 22,000 | 815 | 0 | 0 |
| 22,000 | 23,000 | 835 | 0 | 0 |
| 23,000 | 24,000 | 855 | 0 | 0 |
| 24,000 | 25,000 | 875 | 0 | 0 |
| 25,000 | 26,000 | 895 | 0 | 0 |
| 26,000 | 27,000 | 915 | 0 | 0 |
| 27,000 | 28,000 | 935 | 0 | 0 |
| 28,000 | 29,000 | 955 | 0 | 0 |
| 29,000 | 30,000 | 975 | 0 | 0 |
| 30,000 | 32,000 | 995 | 0 | 0 |
| 32,000 | 34,000 | 1,015 | 0 | 0 |
| 34,000 | 36,000 | 1,035 | 0 | 0 |
| 36,000 | 38,000 | 1,055 | 0 | 0 |
| 38,000 | 40,000 | 1,075 | 0 | 0 |
| 40,000 | 42,000 | 1,095 | 0 | 0 |
| 42,000 | 44,000 | 1,115 | 0 | 0 |

SCHEDULE I—continued.

*Table of rates of ad valorem fees, &c.,*—continued.

| When the amount or value of the subject-matter exceeds | But does not exceed | Proper Fee. | | |
|---|---|---|---|---|
| Rs. | Rs. | Rs. | A. | P. |
| 44,000 | 46,000 | 1,135 | 0 | 0 |
| 46,000 | 48,000 | 1,155 | 0 | 0 |
| 48,000 | 50,000 | 1,175 | 0 | 0 |
| 50,000 | 55,000 | 1,200 | 0 | 0 |
| 55,000 | 60,000 | 1,225 | 0 | 0 |
| 60,000 | 65,000 | 1,250 | 0 | 0 |
| 65,000 | 70,000 | 1,275 | 0 | 0 |
| 70,000 | 75,000 | 1,300 | 0. | 0 |
| 75,000 | 80,000 | 1,325 | 0 | 0 |
| 80,000 | 85,000 | 1,350 | 0 | 0 |
| 85,000 | 90,000 | 1,375 | 0 | 0 |
| 90,000 | 95,000 | 1,400 | 0 | 0 |
| 95,000 | 1,00,000 | 1,425 | 0 | 0 |
| 1,00,000 | 1,05,000 | 1,450 | 0 | 0 |
| 1,05,000 | 1,10,000 | 1,475 | 0 | 0 |
| 1,10,000 | 1,15,000 | 1,500 | 0 | 0 |
| 1,15,000 | 1,20,000 | 1,525 | 0 | 0 |
| 1,20,000 | 1,25,000 | 1,550 | 0 | 0 |
| 1,25,000 | 1,30,000 | 1,575 | 0 | 0 |
| 1,30,000 | 1,35,000 | 1,600 | 0 | 0 |
| 1,35,000 | 1,40,000 | 1,625 | 0 | 0 |
| 1,40,000 | 1,45,000 | 1,650 | 0 | 0 |
| 1,45,000 | 1,50,000 | 1,675 | 3 | 0 |
| 1,50,000 | 1,55,000 | 1,700 | 0 | 0 |
| 1,55,000 | 1,60,000 | 1,725 | 0 | 0 |
| 1,60,000 | 1,65,000 | 1,750 | 0 | 0 |
| 1,65,000 | 1,70,000 | 1,775 | 0 | 0 |
| 1,70,000 | 1,75,000 | 1,800 | 0 | 0 |
| 1,75,000 | 1,80,000 | 1,825 | 0 | 0 |
| 1,80,000 | 1,85,000 | 1,850 | 0 | 0 |
| 1.85,000 | 1,90,000 | 1,875 | 0 | 0 |
| 1,90,000 | 1,95,000 | 1,900 | 0 | 0 |
| 1,95,000 | 2,00,000 | 1,925 | 0 | 0 |
| 2,00,000 | 2,05,000 | 1,950 | 0 | 0 |
| 2,05,000 | 2,10,000 | 1,975 | 0 | 0 |
| 2,10,000 | 2,15,000 | 2,000 | 0 | 0 |
| 2,15,000 | 2,20,000 | 2,025 | 0 | 0 |
| 2,20,000 | 2,25,000 | 2,050 | 0 | 0 |

## SCHEDULE I—concluded.

*Table of rates of ad valorem fees, &c.,*—concluded.

| When the amount of value of the subject-matter exceeds | But does not exceed | Proper Fee. | | |
|---|---|---|---|---|
| Rs. | Rs. | Rs. | A. | P. |
| 2,25,000 | 2,30,000 | 2,075 | 0 | 0 |
| 2,30,000 | 2,35,000 | 2,100 | 0 | 0 |
| 2,35,000 | 2,40,000 | 2,125 | 0 | 0 |
| 2,40,000 | 2,45,000 | 2,150 | 0 | 0 |
| 2,45,000 | 2,50,000 | 2,175 | 0 | 0 |
| 2,50,000 | 2,55,000 | 2,200 | 0 | 0 |
| 2,55,000 | 2,60,000 | 2,225 | 0 | 0 |
| 2,60,000 | 2,65,000 | 2,250 | 0 | 0 |
| 2,65,000 | 2,70,000 | 2,275 | 0 | 0 |
| 2,70,000 | 2,75,000 | 2,300 | 0 | 0 |
| 2,75,000 | 2,80,000 | 2,325 | 0 | 0 |
| 2,80,000 | 2,85,000 | 2,350 | 0 | 0 |
| 2,85,000 | 2,90,000 | 2,375 | 0 | 0 |
| 2,90,000 | 2,95,000 | 2,400 | 0 | 0 |
| 2,95,000 | 3,00,000 | 2,425 | 0 | 0 |
| 3,00,000 | 3,05,000 | 2,450 | 0 | 0 |
| 3,05,000 | 3,10,000 | 2,475 | 0 | 0 |
| 3,10,000 | 3,15,000 | 2,500 | 0 | 0 |
| 3,15,000 | 3,20,000 | 2,525 | 0 | 0 |
| 3,20,000 | 3,25,000 | 2,550 | 0 | 0 |
| 3,25,000 | 3,30,000 | 2,575 | 0 | 0 |
| 3,30,000 | 3,35,000 | 2,600 | 0 | 0 |
| 3,35,000 | 3,40,000 | 2,625 | 0 | 0 |
| 3,40,000 | 3,45,000 | 2,650 | 0 | 0 |
| 3,45,000 | 3,50,000 | 2,675 | 0 | 0 |
| 3,50,000 | 3,55,000 | 2,700 | 0 | 0 |
| 3,55,000 | 3,60,000 | 2,725 | 0 | 0 |
| 3,60,000 | 3,65,000 | 2,750 | 0 | 0 |
| 3,65,000 | 3,70,000 | 2,775 | 0 | 0 |
| 3,70,000 | 3,75,000 | 2,800 | 0 | 0 |
| 3,75,000 | 3,80,000 | 2,825 | 0 | 0 |
| 3,80,000 | 3,85,000 | 2,850 | 0 | 0 |
| 3,85,000 | 3,90,000 | 2,875 | 0 | 0 |
| 3,90,000 | 3,95,000 | 2,900 | 0 | 0 |
| 3,95,000 | 4,00,000 | 2,925 | 0 | 0 |
| 4,00,000 | 4,05,000 | 2,950 | 0 | 0 |
| 4,05,000 | 4,10,000 | 2,975 | 0 | 0 |
| 4,10,000 | ..... | 3,000 | 0 | 0 |

## SCHEDULE II.

*Fixed Fees.*

| NUMBER. | | PROPER FEE. |
|---|---|---|
| 1. Application[a] or petition | (*a*).—When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings; or when presented to any officer of Land Revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement; or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement; or when presented to any civil Court[b] other than a principal civil Court of original jurisdiction, or to any Cantonment Magistrate sitting as a Court of Civil Judica- | One anna. |

[a] in writing, 2 N. W. P. 418.
[b] 7 Bomb. A. C. J. 109.

SCHEDULE II.—(*continued.*)

*Fixed Fees.*

| NUMBER. | | PROPER FEE. |
|---|---|---|
| 1. Application or petition —(*continued*) ... | ture under Act No. III of 1859, or to any Court of Small Causes constituted under Act No. XI of 1865, or under Act No. XVI of 1868, section twenty, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees; or when presented to any civil, criminal or revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, board or officer, or of any other document[a] on record in such Court or office. | One anna. |
| | (*b*).—When containing a complaint or charge of any offence other than an offence for which Police officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any criminal Court; or when presented to a civil, criminal or revenue Court, or to a Collector, or any revenue | Eight annas. |

[a] 6 Bengal, Appendix 137.

SCHEDULE II.—(*continued.*)

*Fixed Fees.*

| NUMBER. | | PROPER FEE. |
|---|---|---|
| 1. Application or petition —(*continued*) ... | officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act; or to deposit in Court revenue or rent; or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant. | Eight annas. |
| | (*c*).—When presented to a Chief Commissioner or other chief controlling revenue or executive authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division and not otherwise provided for by this Act ... ... | One rupee. |
| | (*d*).—When presented to a High Court ... | Two rupees. |
| 2. Application for leave to sue as a pauper ... | ... ... | Eight annas. |
| 3. Application for leave to appeal as a pauper ... | (*a*).—When presented to a District Court ... | One rupee. |
| | (*b*).—When presented to a Commissioner or a High Court ... ... | Two rupees. |

SCHEDULE II.—(*continued.*)

*Fixed Fees.*

| NUMBER. | | PROPER FEE. |
|---|---|---|
| 4. Plaint or memorandum of appeal in a suit to obtain possession under Act No. XVI of 1838, or Bombay Act No. V of 1864 (*to give Mamlutdars' Courts jurisdiction in certain cases to maintain existing possession or to restore possession to any party dispossessed otherwise than by course of law*) ... | | |
| 5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy . . . | ... ... | Eight annas. |
| 6. Bail-bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any court or executive authority ... | | |
| 7. Undertaking under section forty-nine of the Indian Divorce Act ... | | |
| 8. Petition of objection to assessment under the Indian Income Tax Act ... | | |
| 9. Petition of appeal under the Indian Income Tax Act. | ... ... | One rupee. |
| 10. Mukhtárnáma or Wakálatnáma. | When presented for the conduct of any one case— (*a*).—to any civil or criminal Court other than a High Court, or to any revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (*b*) and (*c*) of this Number ... | Eight annas. |

SCHEDULE II.—(*continued*).

*Fixed Fees.*

| NUMBER. | | PROPER FEE. |
|---|---|---|
| Mukhtárnáma &c.,—(*continued*) ... | (*b*).—to a Commissioner of Revenue, Circuit or Customs, or to any officer charged with the executive administration of a Division, not being the chief revenue or executive authority ... | One rupee. |
| | (*c*).—to a High Court, Chief Commissioner, Board of Revenue, or other chief controlling revenue or executive authority ... | Two rupees. |
| 11. Memorandum of appeal when the appeal is not from an order rejecting a plaint or from a decree or an order having the force of a decree, and is presented— | (*a*).—to any civil Court other than a High Court, or to any Revenue Court or executive officer other than the High Court or chief controlling revenue or executive authority ... | Eight annas. |
| | (*b*).—to a High Court or Chief Commissioner, or other chief controlling executive or revenue authority ... ... | Two rupees. |
| 12. Caveat ... 13. Application under Act No. X of 1859, section twenty-six, or Bengal Act No. VI of 1862, section nine, or Bengal Act No. VIII of 1869, section seven[a] ... | ... ... .. | Five rupees. |

[a] *Sic.* Read 'thirty-seven'

SCHEDULE II.—(*continued*).

*Fixed Fees.*

| NUMBER. | | PROPER FEE. |
|---|---|---|
| 14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866 ... ... | ... ... | Five rupees. |
| 15. Plaint or memorandum of appeal in a suit to obtain possession of a wife. | | |
| 16. Administration-bond | ... ... | Eight rupees. |
| 17. Plaint or memorandum of appeal in each of the following suits:— i. to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court: ii. to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates: iii. to obtain a declaratory decree where no consequential relief is prayed[a] iv. to set aside an award: v. to set aside an adoption: vi. every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act ... 18. Application under section three hundred and twenty-six of the Code of Civil Procedure ... 19. Agreement under section three hundred and twenty-eight of the same Code ... ... | ... ... | Ten rupees. |

[a] See 8 Beng. Appendix 32.

SCHEDULE II.—(*concluded*).

*Fixed Fees.*

| NUMBER | | PROPER FEE. |
|---|---|---|
| 20. Every petition under the Indian Divorce Act, except petitions under section forty-four of the same Act, and every memorandum of appeal under section fifty-five of the same Act ... 21. Plaint or memorandum of appeal under the Pársí Marriage and Divorce Act, 1865 ... ... | ... ... | Twenty rupees. |

## ACT No. VIII OF 1870.

*Received the Governor General's assent on the* 18*th March* 1870.

## An Act for the prevention of the murder of Female Infants.

WHEREAS the murder of female infants is believed to be commonly committed in certain parts of British India; and whereas it is necessary to make better provision for the prevention of the said offence; It is hereby enacted as follows:— Preamble.

1. If it shall appear to the Local Government that the said offence is commonly committed in any district, or by any class, or family, or persons residing therein, the Local Government may, with the previous sanction of the Governor General of India in Council, declare, by notification published in the official Gazette, and in such other manner as the Local Government shall direct, that measures for the prevention of such offence shall be taken under this Act, in such district, or in respect of such class, or family, or persons. Power to take measures under Act in particular districts.

The notification shall define the limits of such district, or shall specify the class, or family, or persons to whom such notification is to be deemed to apply.

2. When such notification shall have been published as aforesaid, it shall be lawful for the Local Government, subject to the provisions of section three, Power to make rules.

from time to time to make rules[a] consistent with this Act, for all or any of the following purposes :—

(1.)—For making and maintaining registers of births, marriages, and deaths occurring in such district, or in or among the class, family, or persons to whom such notification has been made applicable; and for making, from time to time, a census of such persons, or of any other persons residing within such district :

(2.)—For the entertainment of any police force in excess of the ordinary fixed establishment of police, or for the entertainment of any officers or servants, for the purpose of preventing or detecting the murder of female infants in such district, or in or among such class, family, or persons, or for carrying out any of the provisions of this Act :

(3.)—For prescribing how and by whom information shall be given to the proper officers of all births, marriages, and deaths occurring or about to occur in such district, or in or among such class, family, or persons :

(4.)—For the regulation and limitation of expenses incurred by any person to whom such notification applies on account of the celebration of marriage or of any ceremony or custom connected therewith :

(5.)—For regulating the manner in which all or any of the expenses incurred in carrying into effect rules made under this section shall be recovered from all or any of the inhabitants of such district, or from the persons to whom such notification is applicable :

(6.)—For defining the duties of any officer or servant appointed to carry out any rule made under this section.

Confirmation and publication of rules.

3. No rule or alteration made under section two shall take effect until it shall have been confirmed by the Governor General of India in Council and published in the *Gazette of India* and also in the local Gazette.

Copies of every such rule shall be affixed in such places, and shall be distributed in such manner, as the Local Government may direct.

Punishment for breach of rules.

4. Whoever disobeys any such rule shall, on conviction before any officer exercising the powers of a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Saving of prosecutions under other laws.

5. Nothing in this Act, or in any rule made and published as aforesaid shall prevent any person from being prosecuted and punished under any other law for any offence punishable under this Act : Provided that no person shall be punished twice for the same offence.

[a] *See* the N. W. P. Rules, *Gazette of India*, 11th February 1871, p. 76. Oudh Rules, *ibid.*, 11th May 1872, p 523, Bombay Rules as to the Lewa and Kurwa Kanbi Castes in the Ahmadábád and Kaira Districts, *Bombay Government Gazette*, Extraordinary, 15th April 1871, p. 453 : 25th September 1873, p. 786.

6. If it appears to the Magistrate of the district that any person to whom the notification mentioned in section one applies, neglects to make proper provision for the maintenance of any female child for whose maintenance he is legally responsible, and that the life or health of such child is thereby endangered, such Magistrate may, in his discretion, place the child under such supervision as he may think proper, and shall, if necessary, remove the child from the custody of such person. Power to place neglected children under supervision.

The Magistrate of the district may order him to make a monthly allowance for the maintenance of the child at such monthly rate not exceeding fifty rupees as to such Magistrate shall seem reasonable, and if such person wilfully neglects to comply with such order, such Magistrate may, for every breach of the order, by warrant direct the amount due to be levied in manner provided by section three hundred and seven[a] of the Code of Criminal Procedure.

Nothing in this section shall affect the powers of a Magistrate under section five hundred and thirty-six[a] of the same Code.

7. This Act shall, in the first instance, extend only to the North-Western Provinces, to the Panjáb, and to Oudh; but the Governor General of India in Council may by order extend it to any part of the territories (other than Oudh) under the immediate administration of the Government of India; and the Governor of Madras in Council, the Governor of Bombay in Council, and the Lieutenant Governor of Bengal, may severally by order extend it to any part of the territories under their respective Governments. Extent of Act.

Every order under this section made by the Governor General of India in Council shall be published in the *Gazette of India*. Every other order made under this section shall be published in the local official Gazette.

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# THE LAND-ACQUISITION ACT, 1870.

## CONTENTS.

Preamble.

PART I.—PRELIMINARY.

SECTION.

1. Short title.
Local extent.
Commencement.

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[a] *See* Act No. X of 1870, sec. 2 & schedule V.

SECTION.

2. Repeal of Acts.
3. Interpretation-clause.

---

## PART II.—ACQUISITION.

*Preliminary Investigation.*

4. Power to enter and survey.
Power to mark out line.
Power to clear land.
Previous notice of entry.
5. Payment for damage.

*Declaration of intended Acquisition.*

6. Declaration that land is required for a public purpose.
Contents of declaration.
Declaration to be evidence.
7. After declaration, Collector to take order for acquisition.
8. Land to be marked out and measured.
Plan.
9. Notice to persons interested.
Contents of notice.
Notice to occupiers.
10. Power to require statements as to names and interests.
Persons required to make statements to be deemed legally bound to do so.

*Enquiry into Value and Claims.*

11. Enquiry into value and amount of compensation.
Tender.
Power to summon witnesses.
12. Postponement of enquiry.
13. Matters to be considered and matters to be neglected.

*Award by Collector.*

14. Award in case of agreement as to compensation.
Award to be filed and to be evidence.
15. Reference where no claimant attends, or if Collector and persons interested cannot agree.

*Taking Possession.*

16. Power to take possession.
17. Power to take possession in cases of urgency.

---

## PART III.—REFERENCE TO COURT AND PROCEDURE THEREON.

18. Collector's statement on reference to Court.
19. Service of notice.
20. Power to appoint an assessor.

SECTION
21. Determination of amount.
22. Appointment of new assessor.
Powers of new assessor.
23. Proceedings to be in open Court.
24. Matters to be considered in determining compensation.
25. Matters to be neglected in determining compensation.
26. Rules as to amount of compensation.
27. Record of assessors' opinions.
28. Difference on questions of law.
29. Agreement as to amount of compensation.
30. Difference as to the amount of compensation.
31. Assessors' fees.
32. Costs of proceedings taken by order of Court.
33. Party to pay costs.
34. Awards to be in writing.
Award to state amount of costs.
Recovery of costs.
35. Appeal from Judge's decision as to compensation.
36. Provisions of Code of Civil Procedure made applicable.

PART IV.—APPORTIONMENT OF COMPENSATION.
37. Particulars of apportionment to be specified.
38. Dispute as to apportionment.
39. Determination of proportions.

PART V.—PAYMENT.
40. Payment of compensation to whom made.
Proviso.
41. Payment on making award by Collector.
42. Percentage on market-value.
Payment with interest.
Time of payment in appealable cases.

PART VI.— TEMPORARY OCCUPATION OF LAND.
43. Temporary occupation of waste or arable land.
Difference as to compensation.
44. Power to enter and take possession.
Restoration of land taken.
45. Difference as to condition of land.

PART VII.—ACQUISITION OF LAND FOR COMPANIES.
46. Company may be authorized to enter and survey.
Construction of sections 4 and 5.
47. Consent of Local Government to acquisition.
Execution of agreement.
48. Previous enquiry.

SECTION.

49. Agreement with Secretary of State in Council.
50. Publication of agreement.

PART VIII.—MISCELLANEOUS.

51. Service of notice.
52. Obstruction to survey, &c.
Filling trenches.
Destroying land-marks.
53. Magistrate to enforce surrender.
54. Government not bound to complete acquisition.
Compensation when acquisition is not completed.
55. Part of house or building not to be taken.
56. Payment of Collector's charges by Municipal Body or Company.
57. Exemption from stamp-duty and fees.
58. Bar of suits to set aside awards under Act.
Limitation of suits for anything done in pursuance of Act.
59. Power to make rules.
Publication of rules.

## ACT No. X OF 1870.

*Received the Governor General's assent on the 1st April* 1870.

# An Act for the acquisition of land for public purposes and for Companies.

Preamble.

WHEREAS it is expedient to consolidate and amend the law for the acquisition of land needed for public purposes and for Companies, and for determining the amount of compensation to be made on account of such acquisition; It is hereby enacted as follows:—

## PART I.—PRELIMINARY.

Short title.

1. This Act may be called "The Land Acquisition Act, 1870":

Local extent.

It extends to the whole of British India;[a]

Commencement.

And it shall come into force on the first day of June 1870.

Repeal of Acts.

2. On and from such day Act No. VI of 1857 (*for the acquisition of land for public purposes*), Act No. II of 1861 (*to amend Act No. VI of* 1857) and Act No. XXII of 1863 (*to provide for taking land for works of public utility to be constructed by private persons or Companies and for regulating the construction and use of works on land so taken*) shall be repealed.

All references made to any of the said Acts in subsequent Acts, orders or contracts shall be read as if made to this Act.

[a] It has also been applied to Mysore (8th June 1870) and the Haidarábád Assigned Districts (14th July 1870).

3. In this Act— Interpretation-clause.

The expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth: "Land."

The expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act: "Person interested."

The expression "Collector" means the Collector of a District, and includes a Deputy Commissioner and any officer specially appointed by the Local Government to perform the functions of a Collector under this Act: "Collector."

The expression "Court" means, in the Regulation Provinces, British Burma and Sindh, a principal civil Court of original jurisdiction, "Court."

and in the Non-regulation Provinces other than British Burma and Sindh, the Court of a Commissioner of a Division,

unless when the Local Government has appointed (as it is hereby empowered to do), either specially for any case, or generally within any specified local limits, a judicial officer to perform the functions of a Judge under this Act, and then the expression "Court" means the Court of such officer:

The expression "Company" means a Company registered under the Indian Companies' Act, 1866, or formed in pursuance of an Act of Parliament, or by Royal Charter or Letters Patent: "Company."

And the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say)— "Entitled to act."

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability:

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted.

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## PART II.—Acquisition.

### *Preliminary Investigation.*

4. Whenever it appears to the Local Government that land in any locality is likely to be needed for any public purpose, a notification to that effect Power to enter and survey.

shall be published in the local Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

Thereupon it shall be lawful for any officer either generally or specially authorized by such Government in this behalf, and for his servants and workmen,

to enter upon and survey and take levels of any land in such locality:

to dig or bore into the sub-soil:

to do all other acts necessary to ascertain whether the land is adapted for such purpose:

Power to mark out line.

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon:

to mark such levels, boundaries and line by placing marks and cutting trenches;

Power to clear land.

and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle.

Previous notice of entry.

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

Payment for damage.

5. The officer so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector, and such decision shall be final.

*Declaration of intended Acquisition.*

Declaration that land is required for a public purpose.

6. Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders:

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid out of public revenues, or out of some municipal fund, or by a Company.

Contents of declaration.

The declaration shall be published in the local official Gazette and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a

plan shall have been made of the land, the place where such plan may be inspected.

The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

Declaration to be evidence.

7. Whenever any land shall have been so declared to be needed for a public purpose, or for a Company, the Local Government, or some officer authorized by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

After declaration, Collector to take order for acquisition.

8. The Collector shall thereupon cause the land (unless it has been already marked out under section four) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof) a plan to be made of the same.

Land to be marked out and measured.

Plan.

9. The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

Notice to persons interested.

Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests.

Contents of notice.

The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.

Notice to occupiers.

In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post.

10. The Collector may also require any such person to deliver to him a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for the year next preceding the date of the statement.

Power to require statements as to names and interests.

Every person required to make or deliver a statement under this section or section nine, shall be deemed to be legally bound to do so within the mean-

Persons required to make state-

ments to be deemed legally bound to do so.

ing of sections one hundred and seventy-five and one hundred and seventy-six of the Indian Penal Code.

*Enquiry into Value and Claims.*

Enquiry into value and amount of compensation. Tender.

**11.** On the day so fixed, the Collector shall proceed to enquire summarily into the value of the land and to determine the amount of compensation which in his opinion should be allowed therefor, and shall tender such amount to the persons interested who have attended in pursuance of the notice.

Power to summon witnesses.

For the purpose of such enquiry, the Collector shall have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (as far as may be) in the same manner as is provided in the case of a civil Court under the Code of Civil Procedure.

Postponement of enquiry.

**12.** The Collector may, if no claimant attends pursuant to the notice, or if for any other cause he thinks fit, from time to time postpone the enquiry to a day to be fixed by him.

Matters to be considered and matters to be neglected.

**13.** In determining the amount of compensation the Collector shall take into consideration the matters mentioned in section twenty-four and shall not take into consideration any of the matters mentioned in section twenty-five.

*Award by Collector.*

Award in case of agreement as to compensation.

**14.** If the Collector and the persons interested agree as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same.

Award to be filed and to be evidence.

Such award shall be filed in the Collector's office and shall be conclusive evidence, as between the Collector and the persons interested, of the value of the land and the amount of compensation allowed for the same.

Reference where no claimant attends, or if Collector and persons interested cannot agree.

**15.** When the Collector proceeds to make the enquiry as aforesaid, whether on the day originally fixed for the enquiry or on the day to which it may have been postponed,

if no claimant attends,

or if the Collector considers that further enquiry as to the nature of the claim ought to be made by the Court,

or if any person whom the Collector has reason to think interested does not attend,

or if the Collector is unable to agree with the persons interested who have attended in pursuance of the notice as to the amount of compensation to be allowed,

or if upon the said enquiry any question respecting the title to the land or any rights thereto or interests therein arise between or among two or more persons making conflicting claims in respect thereof,

the Collector shall refer the matter to the determination of the Court in manner hereinafter appearing.

*Taking Possession.*

**16.** When the Collector has made an award under section fourteen or a reference to the Court under section fifteen, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances. Power to take possession.

**17.** In cases of urgency, whenever the Local Government so directs, the Collector (though no such reference has been directed or award made) may, on the expiration of fifteen days from the publication of the notice mentioned in the first paragraph of section nine, take possession of any waste or arable land needed for public purposes or for a Company. Power to take possession in cases of urgency.

Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

The Collector shall offer to the persons interested compensation for the standing crops and trees (if any) on such land; and in case such offer is not accepted, the value of such crops and trees shall be allowed for in awarding compensation for the land under the provisions herein contained.

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PART III.—REFERENCE TO COURT AND PROCEDURE THEREON.

**18.** In making a reference under section fifteen, the Collector shall state for the information of the Court, in writing under his hand, Collector's statement on reference to Court.

(*a*) the situation and extent of the land needed,

(*b*) the names of the persons whom he has reason to think interested in such land,

(*c*) the amount awarded for damages and paid or tendered under sections five and seventeen, or either of them, the amount of compensation tendered for the land under section eleven, or, if no claimant has attended pursuant to the notice mentioned in section nine, the amount of compensation which the Collector is willing to give to the persons interested, and

(*d*) the grounds on which the amount of compensation was determined.

**19.** The Court shall thereupon cause to be served on each of the persons so named a notice requiring him (if he has not made a claim under section nine) to state to the Court, on or before a day to be therein mentioned, the sum which he claims as compensation for his interest in the land so needed. Service of notice.

The Court shall also cause a notice to be served on the Collector and each of such persons requiring them to appoint, on or before a day to be therein

mentioned, two qualified assessors (one to be nominated by the Collector and the other by the persons interested) for the purpose of aiding the Judge in determining the amount of the compensation.

If no claimant has attended pursuant to the notice mentioned in section nine, the Court shall cause to be affixed on some conspicuous place on or near the land needed a notice to the effect that, if the persons interested in such land do not, on or before a day to be therein mentioned, appear in Court and state the nature of their respective interests in the land and the amount and particulars of their claims to compensation, and nominate a qualified assessor, the Court will proceed to determine such amount.

Power to appoint an assessor.

**20.** In case of failure to nominate either of such assessors within the time so specified, the Judge shall himself appoint an assessor in his stead.

Determination of amount.

**21.** As soon as the assessors have been appointed, the Judge and the assessors shall proceed to determine the amount of the compensation.

Appointment of new assessor.

**22.** If before such amount is determined, any of the assessors dies or desires to be discharged, or refuses or neglects, or becomes incapable to act, the party by whom he was appointed may appoint some other qualified person to act in his place.

If the assessor so dying, or desiring to be discharged, or refusing, or neglecting or becoming incapable were appointed by the Judge,

or, in the case of an assessor appointed by either party, if for the space of seven days after notice from the Court for that purpose the party who appointed such assessor fails to appoint another,

the Judge shall appoint some other qualified person in his stead.

Powers of new assessor.

Every assessor so substituted shall have the same powers as were vested in the former assessor at the time of his so dying or desiring to be discharged, or refusing or neglecting or becoming incapable.

Proceedings to be in open Court.

**23.** Every proceeding under section twenty-one shall take place in open Court, and all persons entitled to practise in any civil Court shall be entitled to appear, plead and act, or to appear and act (as the case may be), in such proceeding.

Matters to be considered in determining compensation.

**24.** In determining the amount of compensation to be awarded for land acquired under this Act, the Judge and assessors shall take into consideration—

*First*, the market-value, at the time of awarding compensation, of such land:

*Secondly*, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of severing such land from his other land:

*Thirdly*, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of the acquisition injuriously affecting his other property, whether moveable or immoveable, in any other manner, or his earnings; and

*Fourthly*, if, in consequence of the acquisition, he is compelled to change his residence, the reasonable expenses (if any) incidental to such change.

Matters to be neglected in determining compensation.

**25.** But the Judge or assessors shall not take into consideration—

*First*, the degree of urgency which has led to the acquisition:

*Secondly*, any disinclination of the person interested to part with the land acquired:

*Thirdly*, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit:

*Fourthly*, any damage which, after the time of awarding compensation, is likely to be caused by or in consequence of the use to which the land acquired will be put:

*Fifthly*, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired:

*Sixthly*, any increase to the value of the other land of the person interested, likely to accrue from the use to which the land acquired will be put; or

*Seventhly*, any outlay or improvements on such land made, commenced, or effected with the intention of enhancing the compensation to be awarded therefor under this Act.

Rules as to amount of compensation.

**26.** Where the person interested has made a claim to compensation, pursuant to any notice mentioned in section nine or in section nineteen, the amount awarded to him shall not exceed the amount so claimed, or be less than the amount tendered by the Collector under section eleven.

Where the person interested has refused to make such claim, or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded may be less than, and shall in no case exceed, the amount so tendered.

Where the person interested has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him shall not be less than, and may exceed, the amount so tendered.

The provisions of this and the two preceding sections shall be read to every assessor, in a language which he understands, before he gives his opinion as to the amount of compensation to be awarded under this Act.

Record of assessors' opinions.

**27.** The opinion of each assessor shall be given orally, and shall be recorded in writing by the Judge.

Difference on questions of law.

28. In case of a difference of opinion between the Judge and the assessors or any of them upon a question of law or practice or usage having the force of law, the opinion of the Judge shall prevail, and there shall be no appeal therefrom.

Agreement as to amount of compensation.

29. In case the Judge and one or both of the assessors agree as to the amount of compensation, their decision thereon shall be final.

Difference as to the amount of compensation.

30. In case of difference of opinion between the Judge and both of the assessors[a] as to the amount of compensation, the decision of the Judge shall prevail, subject to the appeal allowed under section thirty-five.

Assessors' fees.

31. Every assessor appointed under this Act, not being an officer of Government, shall receive such fee for his services as the Judge shall direct, provided that such fee shall not exceed five hundred rupees.

Such fee shall be deemed to be costs in the proceeding.

Costs of proceedings taken by order of Court.

32. The costs of all proceedings taken under this Part by order of the Court shall, in the first instance, be paid by the Collector.

Party to pay costs.

33. Where the amount awarded does not exceed the sum tendered by the Collector, the costs of all proceedings under this Part shall be paid by the person interested.

Where the amount awarded exceeds the sum so tendered, such costs shall be paid by the Collector.

Awards to be in writing.

34. Every award made under this Part shall be in writing signed by the Judge and the assessors or assessor concurring therein, and shall specify the amount awarded under the first clause of section twenty-four, and also the amounts (if any) respectively awarded under the second, third and fourth clauses of the same section, together with the grounds of awarding each of the said amounts.

Award to state amount of costs.

It shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

Recovery of costs.

The costs (if any) payable by the person interested and not deducted under section forty-two may be recovered as if they were costs incurred in a suit, and as if the award were the decree therein.

Appeal from Judge's decision as to compensation.

35. If the Judge differs from both the assessors as to the amount of compensation, he shall pronounce his decision, and the Collector or the person interested (as the case may be) may appeal therefrom to the Court of the District Judge,[b] unless the Judge whose decision is appealed from is the Dis-

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[a] Whether or not they agree with each other, 17 Suth. W. R. 225.

[b] Includes the High Court in the exercise of its appellate jurisdiction, 13 Beng. 189.

trict Judge, or unless the amount which the Judge proposes to award exceeds five thousand rupees, in either of which cases the appeal shall lie to the High Court.

Every appeal under this section shall be presented within the time and in manner provided by the Code of Civil Procedure for regular appeals in suits.

Provisions of Code of Civil Procedure made applicable.

**36.** The following provisions of the Code of Civil Procedure :—

(*a*) as to adding parties,

(*b*) as to adjournment,

(*c*) as to death, marriage and bankruptcy or insolvency of parties,

(*d*) as to summoning witnesses and their attendance,

(*e*) as to examination of parties and witnesses,

(*f*) as to production of documents, and

(*g*) as to commissions to examine absent witnesses and to make local enquiries,

shall apply, so far as may be, to proceedings before the Court.

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## PART IV.—Apportionment of Compensation.

Particulars of apportionment to be specified.

**37.** Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

Dispute as to apportionment.

**38.** When the amount of compensation has been settled under section fourteen, if any dispute arises as to the apportionment of the same or any part thereof, the Collector shall refer such dispute to the decision of the Court.

Determination of proportions.

**39.** When the amount of compensation has been settled by the Court, and there is any dispute as to the apportionment thereof, or when a reference to the Court has been made under section thirty-eight, the Judge sitting alone shall decide the proportions in which the persons interested are entitled to share in such amount.

An appeal shall lie from such decision to the High Court, unless the Judge whose decision is appealed from is not the District Judge, in which case the appeal shall lie in the first instance to the District Judge.

Every appeal under this section shall be presented within the time and in manner provided by the Code of Civil Procedure for regular appeals in suits.

## PART V.—PAYMENT.

Payment of compensation to whom made.

**40.** Payment of the compensation shall be made by the Collector according to the award to the persons named therein, or, in the case of an appeal under section thirty-nine, according to the decision on such appeal:

Proviso.

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

Payment on making award by Collector.

**41.** When the amount of the compensation has been settled under section fourteen, if the persons interested shall so desire, the Collector shall on the making of the same award pay the amount of such compensation and take possession of the land:

Provided that, in any case where immediate possession is not required, he may allow the occupants (if any) of the land to remain in occupation of the same, upon such terms as he and they may agree on, until possession of the land is required.

Percentage on market-value.

**42.** In addition to the amount of any compensation awarded under Part II or Part III of this Act, the Collector shall, in consideration of the compulsory nature of the acquisition, pay fifteen per centum on the market-value mentioned in section twenty-four.

Payment with interest.

When the amount of such compensation is not paid on taking possession, the Collector shall pay the amount awarded and the said percentage with interest on such amount and percentage at the rate of six per centum per annum from the time of so taking possession:

Provided that the costs, if any, payable to the Collector by the person interested, shall be deducted from such amount and percentage.

Time of payment in appealable cases.

Provided that, in cases where the decision of the Court under Part III or Part IV of this Act is liable to appeal, the Collector shall not pay the amount of compensation or the percentage, or any part thereof, until the time for appealing against such decision has expired, and no appeal shall have been presented against such decision, or until any such appeal shall have been disposed of.

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## PART VI.—TEMPORARY OCCUPATION OF LAND.

Temporary occupation of waste or arable land.

**43.** Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Local Government may direct the Collector to procure the occupation and use of the

same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

Difference as to compensation.

In case the Collector and the persons interested differ as to the sufficiency of the compensation, the Collector shall refer such difference for the final order of the Court.

Power to enter and take possession.

**44.** On payment of such compensation,
or on executing such agreement,
or on making a reference under section forty-three,
the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

Restoration of land taken.

And on the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein:

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

Difference as to condition of land.

**45.** In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference for the final order of the Court, and on such reference, or on a reference under section forty-three, the Judge sitting alone shall decide the difference referred.

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## PART VII.—Acquisition of Land for Companies.

Company may be authorized to enter and survey.

**46.** Subject to such rules as the Governor General of India in Council may from time to time prescribe in this behalf, the Local Government may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section four.

Construction of sections four and five.

In every such case section four shall be construed as if, for the words "for such purpose," the words "for the purposes of the Company" were sub-

Exemption from stamp-duty and fees.

57. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Bar of suits to set aside awards under Act.

58. No suit shall be brought to set aside an award under this Act.

Limitation of suits for anything done in pursuance of Act.

And no suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends, nor after the expiration of three months from the accrual of the cause of suit or other proceeding.[a]

Power to make rules.

59. The Local Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made.

Publication of rules.

All such rules, alterations and additions shall, when sanctioned by the Governor General in Council, be published in the local official Gazette, and shall thereupon have the force of law.[b]

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## ACT No. XIII OF 1870.

*Received the Governor General's assent on the 1st April 1870.*

## An Act to apply the provisions of Act No. XVIII of 1854 to Railways belonging to, or worked by, Government.

Application of Railway Act to railways belonging to Government but worked by Companies.

1. Act No. XVIII of 1854 (*relating to Railways in India*) shall apply to all railways now or hereafter belonging to Government, but worked by a Railway Company, in the same manner as if such railways belonged to the Company and had been opened by the Company in manner mentioned in the preamble to the said Act.

Application of Railway Act to railways worked by Government.

2. Subject to the modifications hereinafter mentioned, the said Act shall apply to all railways now or hereafter worked by Government in the same manner as if such railways had been opened by a Railway Company in manner aforesaid.

Modifications of Act when applied to

3. In applying the said Act to any railway now or hereafter worked by Government,

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[a] Repealed, so far as it relates to the limitation of suits, by Act No. IX of 1871, section 2

[b] See the Bengal Rules, *Calcutta Gazette*, 7th July 1875, p. 818: Bombay Rules, *Bombay Government Gazette*, 13th March 1873, p. 226: North-Western Provinces Rules, *North-Western Provinces Gazette*, 18th December 1875, p. 1744.

the expressions "servant of the Company," "such servant," "such servant of the Company," "servant of the said Company," "Company's servants," "servants of the Company," "their servants," and "any of their servants," shall mean a servant or servants employed on such railway: railways worked by Government.

the expressions "officer or servant of such Railway Company," "officer or servant of such Company," "officer or servant of the Company," "servant or officer of the Company," and "such officer or servant" shall mean an officer or servant employed on such railway:

the expressions "the premises of any such Railway Company," "the premises of the Company," "premises belonging to the Company," "lands belonging to such Railway Company," and "lands, stations or other premises belonging to the Company," shall mean the premises, lands or stations (as the case may be) occupied by or for such railway:

the expression "delivered to such Railway Company" shall mean "delivered to an officer on behalf of Government," and the expression "engagements on behalf of the said Railway Company," shall mean engagements on behalf of Government:

sections nine and ten shall be read as if, for the expression "No such Railway Company shall," the expression "The Government shall not" were substituted:

the expressions "any such Railway Company," "such Railway Company," "any such Company," and "the Company" shall mean, in sections three, six, eight, eleven, twelve, fifteen, twenty-two, twenty-seven and thirty,[a] the Government;

but in sections seventeen,[b] twenty-three, forty-one and forty-two, the expressions "Railway Company," "such Railway Company," "the Company," and "they" (when referring to a Company) shall mean the officer for the time being entrusted with the control of such railway:

"XXIX. In the construction of this Act, every officer and servant employed on such railway shall be deemed to be legally bound to do everything necessary for or conducive to the safety of the public, which he shall be required to do by any regulation made by the officer for the time being entrusted with the control of such railway and allowed by the Governor General of India in Council, and of which regulation such officer or servant shall have notice;

and every such officer and servant shall be deemed to be legally prohibited from doing every act which shall be likely to cause danger, and which by any such regulation he shall be prohibited from doing;

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[a] *Sic.* No such expression occurs in s. 30.
[b] See Act No. XXV of 1871, section 4.

and every person employed by or on behalf of the Government to do any act upon the railway shall be deemed to be a servant employed on such railway."

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## ACT No. XX OF 1870.

*Received the Governor General's assent on the 5th July* 1870.

### An Act to correct two clerical errors in the Court Fees Act, 1870.

Preamble.

FOR the purpose of correcting two clerical errors in the Court Fees Act, 1870; It is hereby enacted as follows:—

Corrections of Act VII of 1870, section 15, and schedule I, No 2.

1. Section fifteen of the said Act shall be read as if, for the words "plaint or memorandum of appeal," the word "application" were substituted; and in schedule I to the said Act annexed, Number two shall be read as if the words "or memorandum of appeal" were omitted therefrom.

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## ACT No. XXI OF 1870.

*Received the Governor General's assent on the 19th July* 1870.

### An Act to regulate the Wills of Hindús, Jainas, Síkhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay.

Preamble.

WHEREAS it is expedient to provide rules for the execution, attestation, revocation, revival, interpretation and probate of the wills of Hindús, Jainas, Síkhs and Buddhists in the territories subject to the Lieutenant Governor of Bengal and in the towns of Madras and Bombay; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Hindú Wills Act, 1870."

Certain portions of Act X of 1865 extended to wills of Hindús, Jainas, Síkhs and Buddhists.

2. The following portions of the Indian Succession Act, 1865, namely,—

sections forty-six, forty-eight, forty-nine, fifty, fifty-one, fifty-five and fifty-seven to seventy-seven (both inclusive),

sections eighty-two, eighty-three, eighty-five, eighty-eight to one hundred and three (both inclusive),

sections one hundred and six to one hundred and seventy-seven (both inclusive),

sections one hundred and seventy-nine to one hundred and eighty-nine (both inclusive),

sections one hundred and ninety-one to one hundred and ninety-nine (both inclusive),

so much of Parts XXX and XXXI as relates to grants of probate[a] and letters of administration with the will annexed, and

Parts XXXIII to XL (both inclusive), so far as they relate to an executor and an administrator with the will annexed,

shall, notwithstanding anything contained in section three hundred and thirty-one of the said Act, apply—

Extent of Act.

(*a*) to all wills and codicils made by any Hindú, Jaina, Síkh or Buddhist, on or after the first day of September one thousand eight hundred and seventy, within the said territories or the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(*b*) to all such wills and codicils made outside those territories and limits, so far as relates to immoveable property situated within those territories or limits:

Provisos.

**3.** Provided that marriage shall not revoke any such will or codicil:

And that nothing herein contained shall authorize a testator to bequeath property which he could not have alienated *inter vivos*, or to deprive any persons of any right of maintenance of which, but for section two of this Act, he could not deprive them by will:

And that nothing herein contained shall vest in the executor or administrator with the will annexed of a deceased person any property which such person could not have alienated *inter vivos*:

And that nothing herein contained shall affect any law of adoption or intestate succession:

And that nothing herein contained shall authorise any Hindú, Jaina, Síkh or Buddhist to create in property any interest which he could not have created before the first day of September one thousand eight hundred and seventy.

Partial repeal of Bengal Regulation V of 1799, section 2.

**4.** On and from that day, section two of Bengal Regulation V of 1799 shall be repealed so far as relates to the executors of persons who are not Muhammadans, but are subject to the jurisdiction of a District Court in the territories subject to the Lieutenant-Governor of Bengal.

Saving of rights of Administrator General.

**5.** Nothing contained in this Act shall affect the rights, duties and privileges of the Administrators General of Bengal, Madras and Bombay, respectively.[b]

Interpretation-clause.

**6.** In this Act and in the said sections and Parts of the Indian Succession Act, all words defined in section three of the same Act shall, unless there be

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[a] This makes "the probate evidence against all persons executor or others interested under the will—" 8 Beng. 208, 220.

[b] See Act No. II of 1874.

something repugnant in the subject or context, be deemed to have the same meaning as the said section three has attached to such words respectively :

And in applying sections sixty-two, sixty-three, ninety-two, ninety-six, ninety-eight, ninety-nine, one hundred, one hundred and one, one hundred and two, one hundred and three and one hundred and eighty-two of the said Succession Act, to wills and codicils made under this Act, the words "son," "sons," "child" and "children" shall be deemed to include an adopted child; and the word "grand-children" shall be deemed to include the children, whether adopted or natural-born, of a child whether adopted or natural-born; and the expression "daughter-in-law" shall be deemed to include the wife of an adopted son :

And in making grants under this Act, of letters of administration with the will annexed or with a copy of the will annexed, section one hundred and ninety-five of the said Succession Act shall be construed as if the words "and in case the Hindú Wills Act had not been passed" were added thereto; and section one hundred and ninety-eight of the said Succession Act shall be construed as if, after the word "intestate," the words "and the Hindú Wills Act had not been passed" were inserted; and sections two hundred and thirty and two hundred and thirty-one of the said Succession Act shall be construed as if the words "if the Hindú Wills Act had not been passed" were added thereto, respectively.

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## ACT No. XXII OF 1870.

*Received the Governor General's assent on the* 30*th August* 1870.

## An Act to confirm certain laws affecting European British subjects.

Preamble.

WHEREAS the Governors of the Presidencies of Fort St. George and Bombay in Council, and the Lieutenant-Governor of Bengal in Council, have severally passed divers Acts purporting to apply generally to all persons within the local extent of the said Acts; and whereas doubts have been raised as to the validity of such Acts in so far as they affect to render European British subjects liable to be convicted and punished by tribunals other than the High Courts of Judicature at Fort William, Madras and Bombay; and whereas doubts have also been raised as to the application to European British subjects of certain Acts of the Governor General in Council : For the purpose of removing such doubts, it is hereby enacted as follows :—

Confirmation of local Acts so far as re-

1. Every such Act passed by the Governor of the Presidency of Madras in Council, or by the Governor of the Presidency of Bombay in Council, or by

the Lieutenant Governor of Bengal in Council, shall, so far as regards the liability of European British subjects to be convicted and punished thereunder, be and be deemed to have been as valid as if it had been passed by the Governor General of India in Council at a meeting for the purpose of making Laws and Regulations.[a]

gards European British subjects.

2. Unless there be something repugnant in the context, all Acts heretofore or hereafter passed by the Governor General in Council, which confer summary jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein.[b]

Acts conferring summary jurisdiction over offences to apply to European British subjects.

3. [*Repealed by Act No. X of* 1875.]

4. Nothing in this Act shall be taken to authorize a Magistrate to exceed the limits of his ordinary jurisdiction as to the amount of punishment which he may inflict, or to confer jurisdiction on any Magistrate not being a Justice of the Peace.

Saving of limits of Magistrates' ordinary jurisdiction.

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# THE INDIAN COINAGE ACT, 1870.

## CONTENTS.

Preamble.

*I.—Preliminary.*

SECTIONS.

1. Short title.
2. [*Repealed.*]
3. Interpretation-clause.

*II.—Gold Coinage.*

4. Gold coins.
5. Their standard weight and fineness.
   Remedy allowed.

*III.—Silver Coinage.*

6. Silver coins.
7. Their standard weight and fineness.
   Remedy allowed.

*IV.—Copper Coinage.*

8. Copper coins.
9. Their standard weight.
   Remedy allowed.

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[a] See 34 & 35 Vic., c. 34, s. 3.
See 5 Mad. Appendix, 25.

*V.—Devices on Coins.*

SECTION.

10. Present devices on coins.
11. Power to order other devices.

*VI.—Legal Tender.*

12. Gold coin not a legal tender.
13. Rupees and half rupees a legal tender.
    Provisos.
    Four-anna and two-anna pieces.
14. Copper coin when a legal tender.
15. Coin made under former Acts.

*VII.—Diminished, Counterfeit, and Called-in Coin.*

16. Cutting certain silver coins.
17. Return of cut coin.
    Receipt of cut coin.
18. Indemnification of public servants for anything done before passing of Act.
    Bar of suits.

*VIII.—Coinage of Bullion.*

19. Receipt of gold and silver bullion and coin.
20. Duty on produce of gold bullion.
21. Duty on produce of silver bullion.
22. Charge for melting and cutting bullion.
23. Charge for refining.
24. Certificate for produce of bullion.
25. Withdrawal of bullion.
26. Payment for gold bullion.

*IX.—Power to make Rules.*

27. Rules as to officers and management of the mint.
28. Rules by notification.

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## ACT No. XXIII OF 1870.

*Received the Governor General's assent on the 6th September* 1870.

## An Act to consolidate and amend the law relating to Coinage and the Mint.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to coinage and the mint; It is hereby enacted as follows:—

*I.—Preliminary.*

Short title.

1. This Act may be called "The Indian Coinage Act, 1870."

2. [*Repealed by Act No. XII of* 1873.]

3. In this Act, the expression 'Mint' includes the Mints at Calcutta, at Bombay and at such other places (if any) as the Governor General in Council, by notification in the *Gazette of India*, from time to time directs; Interpretation-clause.

the expression 'Mint-rules' means such rules as the Governor General in Council from time to time prescribes for the management of the mint;

and the expression 'remedy' means variation from the standard weight and fineness.

*II.—Gold Coinage.*

4. The under-mentioned gold coins only shall be coined at the mint:— Gold coins.

(1.)—A gold mohur or fifteen-rupee piece.

(2.)—A five-rupee piece equal to a third of a gold mohur.

(3.)—A ten-rupee piece equal to two-thirds of a gold mohur.

(4.)—A thirty-rupee piece or a double gold mohur.

5. The standard weight of the said gold mohur shall be one hundred and eighty grains Troy, and its standard fineness shall be as follows:—eleven-twelfths, or one hundred and sixty-five grains, of fine gold, and one-twelfth, or fifteen grains, of alloy. Their standard weight and fineness.

The other gold coins shall be of proportionate weight and of the same fineness:

Provided that, in the making of gold coins, a remedy shall be allowed of an amount not exceeding two thousandths in weight and two thousandths in fineness. Remedy allowed.

*III.—Silver Coinage.*

6. The under-mentioned silver coins only shall be coined at the mint:— Silver coins.

(1.)—A rupee to be called the Government rupee.

(2.)—A half rupee.

(3.)—A quarter rupee, or four-anna piece.

(4.)—An eighth of a rupee, or two-anna piece.

7. The standard weight of the Government rupee shall be one hundred and eighty grains Troy, and its standard fineness shall be as follows:—eleven-twelfths, or one hundred and sixty-five grains, of fine silver, and one-twelfth, or fifteen grains, of alloy. Their standard weight and fineness.

The other silver coins shall be of proportionate weight and of the same fineness:

Remedy allowed.

Provided that, in the making of silver coins, a remedy shall be allowed of an amount not exceeding the following:—

| | Remedy in weight. | Remedy in fineness. |
|---|---|---|
| Rupee ... ... ... ... | Five thousandths | Two thousandths. |
| Half rupee ... ... ... | | |
| Quarter rupee ... ... ... | Seven thousandths | Three thousandths. |
| Eighth of a rupee ... ... ... | Ten thousandths | |

*IV.—Copper Coinage.*

Copper coins.

8. The under-mentioned copper coins only shall be coined at the mint:—

(1.)—A double pice, or half anna.

(2.) A pice, or quarter anna.

(3.)—A half pice, or one-eighth of an anna.

(4.)—A pie, being one-third of a pice, or one-twelfth of an anna.

Their weight.

9. The weight of the double pice shall be two hundred grains Troy.

The other copper coins shall be of proportionate weight:

Remedy allowed.

Provided that, in the making of copper coins, a remedy shall be allowed of an amount not exceeding one-fortieth in weight.

*V.—Devices on Coins.*

Present devices on coins.

10. Until the Governor General in Council otherwise orders under the power hereinafter conferred, the coins coined under this Act shall bear on the obverse the likeness of Her Majesty Queen Victoria, and the inscription "Victoria Queen," and on the reverse the designation of the coins in English filled by the word "India," with such date and embellishments on each coin as the Governor General in Council from time to time determines.

Power to order other devices.

11. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, direct the coining and issuing of all coins authorized by this Act, and prescribe, in lieu of the likeness and inscription hereinbefore mentioned, such other likeness and inscription for all or any of the said coins as he thinks fit.

*VI.—Legal Tender.*

Gold coin not a legal tender.

12. No gold coin shall be a legal tender in payment or on account.

Rupees and half rupees a legal tender.

13. The said rupee and half rupee shall be a legal tender in payment or on account:

Provided that the coin has not lost more than two per cent. in weight:

Provided also that it has not been clipped or filed, or defaced or diminished, otherwise than by use.

The quarter rupee and eighth of a rupee shall be legal tender only for the fractions of a rupee, subject to the second proviso contained in this section. Four-anna and two-anna pieces.

**14.** The double pice shall be a legal tender for the thirty-second part of a rupee or for half an anna; Copper coin when a legal tender.

the pice for the sixty-fourth part of a rupee or for one-fourth of an anna;

the half pice for the one hundred and twenty-eighth part of a rupee or for one-eighth of an anna;

and the pie for the hundred and ninety-second part of a rupee or for one-twelfth of an anna:

Provided that none of the said copper coins shall be a legal tender, except for the fractions of a rupee.

**15.** All silver coin of the weight and standard specified in the Acts No. XVII of 1835, No. XXI of 1838, and No. XIII of 1862, issued since the passing of those Acts, respectively, and declared by those Acts, respectively, to be a legal tender, Coin made under former Acts.

and all copper coins of the weight specified in Acts No. XXI of 1835, No. XXII of 1844, and No. XIII of 1862, issued since the passing of those Acts, respectively, and declared by those Acts, respectively, to be a legal tender,

shall continue to be a legal tender for the amounts thereof, respectively, subject to the same conditions and provisions as under those Acts, respectively, anything contained in this Act or in any Act hereby repealed notwithstanding.

### *VII.—Diminished, Counterfeit and Called-in Coin.*

**16.** When any silver coin purporting to be coined and issued under the authority of the Government of India is tendered to any officer authorized by the Governor General in Council or the Local Government to act under this section,[a] who has reason to believe it to have lost, by reasonable wearing, more than two per cent. in weight, Cutting certain silver coins.

or to be counterfeit,

or to have been reduced in weight otherwise than by reasonable wearing,

or to be called-in by any proclamation,

he may, by himself or another,

(subject to the rules which the Governor General in Council prescribes in this behalf),

cut or break such coin.

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[a] The following officers have been so authorised:—every officer in charge of a Government treasury; every Commissioner, Deputy or Assistant Commissioner of the Department of Issue of the Government Paper Currency; the Secretary and Treasurer of each of the Banks of Bengal, Madras and Bombay, and every Agent in charge of a branch of any of the said Banks—*Gazette of India*, 5th October 1872, p. 912.

Return of cut coin.

**17.** If any coin so cut or broken is counterfeit, or has been reduced in weight otherwise than by reasonable wearing, the pieces shall be returned to the person tendering the coin, and he shall bear the loss caused by such cutting or breaking.

Receipt of cut coin.

But if it has been coined and issued by the authority of the Government of India, and has lost by reasonable wearing more than two per cent. in weight, or has been called-in by any proclamation, the officer cutting or breaking the same shall receive it at the rate of one rupee per tola.

Indemnification of public servants.

**18.** All public servants are hereby indemnified for anything done heretofore, which they might lawfully have done if this Act had been in force, and if they had been authorized under section sixteen, and no suit or other proceeding shall be maintained against any such person in respect of anything so done.

Bar of suits for acts done *bonâ fide*.

No suit or other proceeding shall be maintained against any person in respect of anything done by him *bonâ fide* pursuant to this Act.

*VIII.—Coinage of Bullion.*

Receipt of gold and silver bullion and coin.

**19.** Subject to the mint-rules for the time being in force, the Mint Master shall receive all gold and silver bullion and coin brought to the mint:

Provided that such bullion and coin be fit for coinage:

Provided also that the quantity so brought at one time by one person is not less, in the case of gold, than fifty tolas, and, in the case of silver, than one thousand tolas.

Duty on produce of gold bullion.

**20.** A duty shall be levied at the rate of one rupee per cent. at the mint on the produce of all gold bullion and on all gold coin brought for coinage to the mint in accordance with the said mint-rules.

Duty on produce of silver bullion.

**21.** All silver bullion or coin brought for coinage to the mint, in accordance with the said mint-rules, shall be subject to a duty at the rate of two per cent. on the produce of such bullion or coin, and the amount of such duty shall be deducted from the return to be made to the proprietor.

Charge for melting and cutting bullion.

**22.** A charge of one-fourth per mille on gold bullion and coin, and of one per mille on silver bullion and coin, shall also be levied for melting or cutting such bullion and coin so as to render the same fit for receipt into the mint.

Charge for refining.

**23.** All gold and silver bullion and coin brought to the mint for coinage and which is inferior to the standard fineness prescribed by this Act, or which, from brittleness or other cause, is unfit for coinage, shall, in case it is refined, be subject, in addition to the duty and charge aforesaid, to such charge on account of the loss and expense of refining as the Governor General in Council prescribes in this behalf.

**24.** The Mint Master, on the delivery of gold or silver bullion or coin into the mint for coinage, shall grant to the proprietor a receipt which shall entitle him to a certificate from the Assay Master for the net produce of such bullion or coin payable at the General Treasury. Certificate for produce of bullion.

**25.** The proprietor of any bullion or coin so delivered for coinage, who is dissatisfied with the Assay Master's report of its value, may, within twenty-four hours after receiving such report, and subject to the payment of the fee prescribed in this behalf by the Governor General in Council, withdraw such bullion or coin without being subject to the duties on coinage imposed by this Act. Withdrawal of bullion.

**26.** For all gold bullion and coin, in respect of which the Assay Master has granted a certificate, payment shall be made, as nearly as may be, in gold coins coined under this Act or Act No. XVII of 1835; and the balance (if any) due to the proprietor shall be paid in silver, or in silver and copper, coins current in British India. Payment for gold bullion.

## *IX.—Power to make Rules.*

**27.** The Governor General in Council may from time to time— Rules as to officers and management of the mint.

(1) fix the number and duties of the officers of, and persons employed in, the mint:

(2) make rules and give directions (subject to the provisions of this Act, and any notification made thereunder) respecting the management of the mint, and revoke and alter such rules and directions.[a]

**28.** The Governor General in Council may also, from time to time, by notification in the *Gazette of India*,— Rules by notification.

(1) diminish the amount of remedy allowed by sections five, seven and nine in the case of any coin:

(2) determine in the case of any coin the date and embellishments to be put thereon:

(3) call-in coins of any date or denomination, or any coins coined before the date in the notification mentioned:

(4) prescribe rules for the guidance of officers authorized to cut or break coin under section sixteen:[b]

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[a] Rules for receipt of bullion and coin in the Calcutta Mint and byelaws of the Mint bullion depôt, *Gazette of India*, 19th July 1873, p. 647.

[b] 1. When any silver coin, purporting to be coined and issued under the authority of the Government of India, is tendered to any of the officers authorized by this notification to act under section 16 of the Indian Coinage Act, 1870, who has reason to believe it to be counterfeit, or to have been reduced in weight otherwise than by reasonable wearing, he shall cut and break such coin, and, under section 16 of the said Act, return the pieces to the person tendering the coin.

2. When any rupee or half rupee, purporting to be coined and issued under the authority of the Government of India, is tendered to any such officer who has reason to believe it to have

(5) prescribe the charge to be made on account of the loss and expense of refining:

(6) determine the period for which certificates granted under section twenty-four shall run:

(7) fix the fee payable under section twenty-five:

(8) establish a mint at any place in British India, other than Calcutta and Bombay:

(9) abolish any mint so established or any mint now existing in British India:

(10) regulate any matters relative to coinage and to the mint, which are not provided for by this Act:

(11) revoke or alter any notification previously made under this Act.

Every such notification shall come into force on the day therein in that behalf mentioned, and shall have effect as if it were enacted in this Act.

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## ACT No. XXVII OF 1870.

*Received the Governor General's assent on the 25th November* 1870.

## An Act to amend the Indian Penal Code.

Preamble.

For the purpose of amending the Indian Penal Code; It is hereby enacted as follows:—

1. For section thirty-four of the said Code, the following section shall be substituted:—

Liability for act done by several persons in furtherance of common intention.

"34. [*See above, vol. i, p.* 399.]

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lost, by reasonable wearing, more than two per cent. in weight, he shall cut or break such coin, and, at the option of the person tendering the coin, return to him the pieces, or retain them and pay to him their value at the rate of one rupee for one hundred and eighty grains troy weight.

3. A quarter rupee, or an eighth of a rupee, tendered to such an officer must, under section 13 of the Act, be accepted as legal tender for a fraction of a rupee, even though it have lost, by reasonable wearing, more than two per cent. in weight.

4. If, by reason of the obliteration of the device upon it, or for any other cause, any quarter rupee, or eighth of a rupee, that shall come into the possession of such an officer shall appear to him to be unfit for further circulation, it shall not be cut or broken, but shall, whatever be its weight, be withdrawn from circulation, and dealt with in the manner prescribed in Rule 5. But quarter rupees and eighths of a rupee shall not be withdrawn from circulation, if they appear to be otherwise fit to circulate, only because they have lost, by reasonable wearing, more than two per cent. in weight.

5. The pieces of coin cut or broken and paid for under Rule 2, and the coin withdrawn from circulation under Rule 4, shall be sent by the first convenient opportunity to the Master of the Mint at Bombay or Calcutta. Meanwhile, the actual sum paid for the cut or broken pieces, and the nominal value of the coin withdrawn, shall be entered in the statement of the cash balance of the officer who has received them as "uncurrent coin." Upon their receipt at the Mint, the Master of the Mint shall give credit for them at the same values, and any loss incurred in their re-coinage shall be a charge of the Mint.

6. No officer of any of the Presidency Banks shall exercise any of the powers conferred on him by this notification save in respect of coin received by him on behalf of Government, *Gazette of India*, 5th October 1872, p. 912.

2. For section forty of the said Code, the following section shall be substituted :—

"40. [*See above, vol. i, p.* 401.]

"Offence."

3. Section fifty-six of the said Code shall be read as if the following proviso were added thereto :—

"Provided that" [*See above, vol. i, p.* 404.]

Proviso as to sentence for term exceeding ten years, but not for life.

4. After section one hundred and twenty-one of the said Code, the following section shall be inserted :—

"121A. [*See above, vol. i, p.* 423.]

Conspiracy to commit offences punishable by section 121.

5. After section one hundred and twenty-four of the said Code, the following section shall be inserted :—

"124A. [*See above, vol. i, p.* 424.]

Exciting disaffection.

6. Section one hundred and thirty-one of the said Code shall be read as if the following Explanation were added thereto :—

Addition to section 131.

"*Explanation.*—[*See above, vol. i, p.* 425.]

7. Sections one hundred and ninety-four and one hundred and ninety-five of the said Code shall be read as if, after the words 'by this Code,' the words 'or the law of England' were inserted.

Amendment of sections 194 and 195.

8. Sections two hundred and twenty-two and two hundred and twenty-three of the said Code shall be construed as if, after the word 'offence,' the following words were inserted (that is to say), "or lawfully committed to custody;"

Amendment of sections 222 and 223.

and section two hundred and twenty-two of the said Code shall be construed as if the following words were added thereto (that is to say), "or if the person was lawfully committed to custody."

9. After section two hundred and twenty-five of the said Code, the following section shall be inserted:—

"225A. [*See above, vol. i, p.* 450.]

Escape from custody for failing to furnish security.

10. After section two hundred and ninety-four, and before chapter XV of the Indian Penal Code, the following section shall be inserted :—

"294A. [*See above, vol. i, pp.*461, 462.]

Keeping lottery-office.

11. Section three hundred and seven of the said Code shall be read as if the following clause were added thereto :—

"When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death."

Attempts by life-convicts.

12. After section three hundred and four of the same Code, the following section shall be inserted :—

Causing death by negligence.

"304A. [*See above, vol. i, p.* 466.]

Application of certain chapters of Penal Code.

13. The following chapters of the same Code, namely, IV (*General Exceptions*), V (*Of Abetment*), and XXIII (*Of Attempts to commit Offences*) shall apply to offences punishable under the said sections 121A, 294A and 304A, and the said chapters IV and V shall apply to offences punishable under the said sections 124A and 225A.

Order of Local Government necessary to prosecution under section 121A, 124A or 294A.

14. No charge of an offence punishable under any of the said sections 121A, 124A and 294A shall be entertained by any Court unless the prosecution be instituted by order of, or under authority from, the Local Government.

Saving of special and local laws.

15. Nothing contained in this Act shall be taken to affect any of the provisions of any special or local law.

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# THE CATTLE-TRESPASS ACT, 1871.

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## CONTENTS.

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PREAMBLE.

CHAPTER I.—PRELIMINARY.

SECTIONS.

1. Short title.
   Local extent.
2. Repeal of Acts.
   References to repealed Acts.
3. Interpretation-clause.

CHAPTER II.—POUNDS AND POUND-KEEPERS.

4. Establishment of pounds.
5. Control of pounds.
   Rates of charge for feeding impounded cattle.
6. Appointment of pound-keepers.
   *Ex officio* pound-keepers in Madras and Bombay.
   Suspension or removal of pound-keepers.
   Pound-keepers may hold other offices.
   Pound-keepers to be 'public servants.'

SECTION.

7. To keep registers and furnish returns.
8. To register seizures.
9. To take charge of and feed cattle.

## CHAPTER III.—IMPOUNDING CATTLE.

10. Cattle damaging land.
Police to aid seizures.
11. Cattle damaging public roads, canals and embankments.
12. Fines for cattle impounded.
List of fines and charges for feeding.

## CHAPTER IV.—DELIVERY OR SALE OF CATTLE.

13. Procedure when owner claims the cattle and pays fines and charges.
14. Procedure if cattle be not claimed within a week.
15. Delivery to owner disputing legality of seizure, but making deposit.
16. Procedure when owner refuses or omits to pay the fines and expenses.
Deduction of fines and expenses.
Delivery of unsold cattle and balance of proceeds.
Receipt.
17 Disposal of fines, expenses and surplus proceeds of sale.
18. Application of fines and unclaimed proceeds of sales.
19. Officers and pound-keepers not to purchase cattle at sales under Act.
Pound-keepers when not to release impounded cattle.

## CHAPTER V.—COMPLAINTS OF ILLEGAL SEIZURES.

20. Power to make complaints.
21. Procedure on complaint.
22. Compensation for illegal seizure.
Release of cattle.
23. Recovery of compensation.

## CHAPTER VI.—PENALTIES.

24. Penalty for forcibly opposing the seizure of cattle or rescuing the same.
25. Recovery of penalty for mischief committed by causing cattle to trespass.
26. Penalty for damage caused to land or crops or public roads by pigs.
27. Penalty on pound-keeper failing to perform duties.
28. Application of fines recovered under section 25, 26 or 27.

## CHAPTER VII.—SUITS FOR COMPENSATION.

29. Saving of right to sue for compensation.
30. Set-off.
Schedule of repealed Acts.

12. After section three hundred and four of the same Code, the following section shall be inserted :—

Causing death by negligence.

"304A. [*See above, vol. i, p.* 466.]

Application of certain chapters of Penal Code.

13. The following chapters of the same Code, namely, IV (*General Exceptions*), V (*Of Abetment*), and XXIII (*Of Attempts to commit Offences*) shall apply to offences punishable under the said sections 121A, 294A and 304A, and the said chapters IV and V shall apply to offences punishable under the said sections 124A and 225A.

Order of Local Government necessary to prosecution under section 121A, 124A or 294A.

14. No charge of an offence punishable under any of the said sections 121A, 124A and 294A shall be entertained by any Court unless the prosecution be instituted by order of, or under authority from, the Local Government.

Saving of special and local laws.

15. Nothing contained in this Act shall be taken to affect any of the provisions of any special or local law.

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# THE CATTLE-TRESPASS ACT, 1871.

## CONTENTS.

PREAMBLE.

CHAPTER I.—PRELIMINARY.

SECTIONS.

1. Short title.
   Local extent.
2. Repeal of Acts.
   References to repealed Acts.
3. Interpretation-clause.

CHAPTER II.—POUNDS AND POUND-KEEPERS.

4. Establishment of pounds.
5. Control of pounds.
   Rates of charge for feeding impounded cattle.
6. Appointment of pound-keepers.
   *Ex officio* pound-keepers in Madras and Bombay.
   Suspension or removal of pound-keepers.
   Pound-keepers may hold other offices.
   Pound-keepers to be 'public servants.'

SECTION.

7. To keep registers and furnish returns.
8. To register seizures.
9. To take charge of and feed cattle.

CHAPTER III.—IMPOUNDING CATTLE.

10. Cattle damaging land.
    Police to aid seizures.
11. Cattle damaging public roads, canals and embankments.
12. Fines for cattle impounded.
    List of fines and charges for feeding.

CHAPTER IV.—DELIVERY OR SALE OF CATTLE.

13. Procedure when owner claims the cattle and pays fines and charges.
14. Procedure if cattle be not claimed within a week.
15. Delivery to owner disputing legality of seizure, but making deposit.
16. Procedure when owner refuses or omits to pay the fines and expenses.
    Deduction of fines and expenses.
    Delivery of unsold cattle and balance of proceeds.
    Receipt.
17 Disposal of fines, expenses and surplus proceeds of sale.
18. Application of fines and unclaimed proceeds of sales.
19. Officers and pound-keepers not to purchase cattle at sales under Act.
    Pound-keepers when not to release impounded cattle.

CHAPTER V.—COMPLAINTS OF ILLEGAL SEIZURES.

20. Power to make complaints.
21. Procedure on complaint.
22. Compensation for illegal seizure.
    Release of cattle.
23. Recovery of compensation.

CHAPTER VI.—PENALTIES.

24. Penalty for forcibly opposing the seizure of cattle or rescuing the same.
25. Recovery of penalty for mischief committed by causing cattle to trespass.
26. Penalty for damage caused to land or crops or public roads by pigs.
27. Penalty on pound-keeper failing to perform duties.
28. Application of fines recovered under section 25, 26 or 27.

CHAPTER VII.—SUITS FOR COMPENSATION.

29. Saving of right to sue for compensation.
30. Set-off.
    Schedule of repealed Acts.

## ACT No. I of 1871.

*Received the Governor General's assent on the 13th January* 1871.

# An Act to consolidate and amend the law relating to Trespasses by Cattle.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to trespasses by cattle; It is hereby enacted as follows:—

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## CHAPTER I.—PRELIMINARY.

Short title.

1. This Act may be called 'The Cattle-trespass Act, 1871.'

Local extent.

It extends to the whole of British India except the Presidency Towns and such districts or tracts of country as the Local Government, with the sanction of the Governor General in Council, may exclude from its operation.[a]

Repeal of Acts.

2. The Acts mentioned in the schedule hereto annexed are repealed.

References to repealed Acts.

References to any of the said Acts in Acts passed subsequently thereto shall be read as if made to this Act.

All pounds established, pound-keepers appointed and villages determined, under Act No. III of 1857 (*relating to trespasses by Cattle*), shall be deemed to be, respectively, established, appointed and determined under this Act.

Interpretation-clause.

3. In this Act:—

'Officer of Police' includes also village-watchman, and

'Cattle' includes also elephants, camels, buffalos, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids.

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## CHAPTER II.—POUNDS AND POUND-KEEPERS.

Establishment of pounds.

4. Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the Local Government, from time to time directs.

The village by which every pound is to be used shall be determined by the Magistrate of the District.

Control of pounds. Rates of charge for feeding impounded cattle.

5. The pounds shall be under the control of the Magistrate of the District; and he shall fix, and may from time to time alter, the rates of charge for feeding and watering impounded cattle.

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[a] It has also been extended to the Haidarábád Assigned Districts (*Gazette of India*, 4th March 1871, p. 137) and to Mysore (*Gazette of India*, 6th April 1872, p. 377).

6. The Magistrate of the District shall also appoint for each pound a pound-keeper: Appointment of pound-keepers.

Provided that, in the Presidency of Fort St. George, the heads of villages, and, in the Presidency of Bombay, the police pátíls, or (where there are no police pátíls) the heads of villages, shall be *ex officio* the keepers of village pounds. *Ex officio* pound-keepers in Madras and Bombay.

Every pound-keeper appointed by the Magistrate of the District may be suspended or removed by such Magistrate. Suspension or removal of pound-keepers.

Any pound-keeper may hold simultaneously any other office under Government. Pound-keepers may hold other offices.

Every pound-keeper shall be deemed a public servant within the meaning of the Indian Penal Code. Pound-keepers to be 'public servants.'

*Duties of Pound-keepers.*

7. Every pound-keeper shall keep such registers and furnish such returns as the Local Government from time to time directs. To keep registers and furnish returns.

8. When cattle are brought to a pound, the pound-keeper shall enter in his register, To register seizures.

(*a*) the number and description of the animals,

(*b*) the day and hour on and at which they were so brought,

(*c*) the name and residence of the seizer, and

(*d*) the name and residence of the owner, if known,

and shall give the seizer or his agent a copy of the entry.

9. The pound-keeper shall take charge of, feed and water the cattle until they are disposed of as hereinafter directed. To take charge of and feed cattle.

## CHAPTER III.—IMPOUNDING CATTLE.

10. The cultivator or occupier of any land, Cattle damaging land.

or any person who has advanced cash for the cultivation of the crop or produce on any land,

or the vendee or mortgagee of such crop or produce, or any part thereof,

may seize or cause to be seized any cattle trespassing on such land, and doing damage thereto or to any crop or produce thereon, and take them or cause them to be taken without unnecessary delay to the pound established for the village in which the land is situate.

All officers of police shall, when required, aid in preventing (*a*) resistance to such seizures and (*b*) rescues from persons making such seizures. Police to aid seizures.

11. Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments and the like, and officers of police may Cattle damaging public roads,

canals and embankments.

seize, or cause to be seized, any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments and the like, or the sides or slopes of such roads, canals, drainage-works or embankments, or found straying thereon,

and shall take them without unnecessary delay to the nearest pound.

Fines for cattle impounded.

**12.** For every head of cattle impounded as aforesaid, the pound-keeper shall levy a fine[a] according to the following scale :—

| | |
|---|---|
| Elephant ... ... ... | two rupees. |
| Camel or buffalo ... ... ... | eight annas. |
| Horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow or heifer ... | four ,, |
| Calf, ass, or pig ... ... ... | two ,, |
| Ram, ewe, sheep, lamb, goat or kid ... | one anna. |

All fines so levied shall be sent to the Magistrate of the District through such officer as the Local Government from time to time directs.

List of fines and charges for feeding.

A list of the fines and of the rates of charge for feeding and watering cattle shall be stuck up in a conspicuous place on or near to every pound.

## CHAPTER IV.—Delivery or Sale of Cattle.

Procedure when owner claims the cattle and pays fines and charges.

**13.** If the owner of impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

The owner or his agent on taking back the cattle shall sign a receipt for them in the register kept by the pound-keeper.

Procedure if cattle be not claimed within a week.

**14.** If the cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall report the fact to the officer in charge of the nearest police-station, or to such other officer as the Magistrate of the District appoints in this behalf.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating—

(*a*) the number and description of the cattle,

(*b*) the place where they were seized,

(*c*) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of

[a] 7 Bomb. C. C. 55.

his establishment deputed for that purpose, at such place and time, and subject to such conditions as the Magistrate of the District by general or special order from time to time directs:

Provided that if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

**15.** If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal and that the owner is about to make a complaint under section twenty, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

Delivery to owner disputing legality of seizure but making deposit.

**16.** If the owner or his agent appear, and refuse or omit to pay or (in the case mentioned in section fifteen) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer, at such place and time, and subject to such conditions as are referred to in section fourteen.

Procedure when owner refuses or omits to pay the fines and expenses.

The fines leviable and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

Deduction of fines and expenses.

The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing—

Delivery of unsold cattle and balance of proceeds.

(*a*) the number of cattle seized,

(*b*) the time during which they have been impounded,

(*c*) the amount of fines and charges incurred,

(*d*) the number of cattle sold,

(*e*) the proceeds of sale, and

(*f*) the manner in which those proceeds have been disposed of.

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him according to such account.

Receipt.

**17.** The officer by whom the sale was made shall send to the Magistrate of the District the fines so deducted.

Disposal of fines, expenses and surplus proceeds of sale.

The charges for feeding and watering deducted under section sixteen shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section thirteen.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and, if no claim thereto be preferred and established within that period, shall, at its expiry, dispose of them as hereinafter provided.

Application of fines and unclaimed proceeds of sales.

**18.** Out of the sums received on account of fines and the unclaimed proceeds of the sale of cattle, shall be paid—

(*a*) the salaries allowed to pound-keepers under the orders of the Local Government;

(*b*) the expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act;

and the surplus (if any) shall be applied, under orders of the Local Government, to the construction and repair of roads and bridges and to other purposes of public utility.

Officers and pound-keepers not to purchase cattle at sales under Act.

**19.** No officer of police, or other officer or pound-keeper appointed under the provisions herein contained shall, directly or indirectly, purchase any cattle at a sale under this Act.

Pound-keepers when not to release impounded cattle.

No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this chapter, unless such release or delivery is ordered by a Magistrate or civil Court.

## CHAPTER V.—COMPLAINTS OF ILLEGAL SEIZURES.

Power to make complaints.

**20.** Any person whose cattle have been seized and detained under this Act may, at any time within ten days from the date of the seizure, make a complaint to the Magistrate of the District, or any Magistrate authorized to receive and try charges without reference by the Magistrate of the District.

Procedure on complaint.

**21.** The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an enquiry into the case.

Compensation for illegal seizure.

**22.** If the seizure be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure and detention, reasonable compensation,[a] not exceeding one hundred rupees, to be paid by the person who made the seizure, together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle;

Release of cattle.

and if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure.

[a] See Act No. X of 1872, sec. 286, illustration (*k*).

23. The compensation, fines and expenses mentioned in section twenty-two may be recovered as if they were fines imposed by the Magistrate. Recovery of compensation.

## CHAPTER VI.—PENALTIES.

24. Whoever forcibly opposes the seizure of cattle liable to be seized under this Act, Penalty for forcibly opposing the seizure of cattle or rescuing the same.

and whoever rescues the same after seizure, either from a pound, or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act,

shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

25. Any fine imposed for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed. Recovery of penalty for mischief committed by causing cattle to trespass.

26. Any owner or keeper of pigs who, through neglect or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road, by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished with fine not exceeding ten rupees Penalty for damage caused to land or crops or public roads by pigs.

27. Any pound-keeper[a] releasing or purchasing or delivering cattle contrary to the provisions of section nineteen, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees. Penalty on pound-keeper failing to perform duties.

Such fines may be recovered by deductions from the pound-keeper's salary.

28. All fines recovered under section twenty-five, section twenty-six or section twenty-seven may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate. Application of fines recovered under section 25, 26 or 27.

## CHAPTER VII.—SUITS FOR COMPENSATION.

29. Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespass of cattle, from suing for compensation in any competent Court. Saving of right to sue for compensation.

[a] 9 Bomb. 164.

Set-off.

30. Any compensation paid to such person under this Act by order of the convicting Magistrate, shall be set-off and deducted from any sum claimed by or awarded to him as compensation in such suit.

## SCHEDULE.

(*See section* 2).

| Number and year. | Title of Act. |
|---|---|
| III of 1857 ... | An Act relating to trespasses by cattle. |
| V of 1860 ... | An Act to amend Act III of 1857 (relating to trespasses by cattle). |
| XXII of 1861 ... | An Act to amend Act III of 1857 (relating to trespasses by cattle). |

# THE INDIAN PAPER CURRENCY ACT, 1871.

## CONTENTS.

PREAMBLE.

*I.—Preliminary.*

SECTION.

1. Short title.
   Local extent.
2. Acts repealed.

*II.—The Department of Issue.*

3. Functions of Department of Issue.
4. Head Commissioner.
   Commissioners at Madras and Bombay.
5. Power to establish Circles of Issue.
6. Deputy Commissioners.
7. Subordination of Commissioners and Deputy Commissioners.
8. Appointment, suspension and removal of officers.

*III.—Supply and Issue of Currency Notes.*

9. Head Commissioner to provide and distribute currency notes.
   Notes where payable.
10. Signatures to notes.
11. Issue of notes for silver.
    Proviso.
12. Issue of notes for gold.
13. Expense of melting and assaying bullion received for notes.
    Loss of weight.

SECTION.

14. Certificates for bullion.
Contents of certificate.
15. Notes where legal tender.

*IV.—Reserve.*

16. Bullion received for notes to be kept as a reserve.
Except amount fixed as minimum limit of circulation.
17. Investment of such amount.
Appropriation of coin, bullion and securities.
Sale or exchange of bullion and foreign coin.
18. Trustees of securities purchased under Act.
19. Power to sell such securities.
Power to replace them.
20. Interest on such securities to be entered in a separate account.
"Profits of Notes Circulation."
Annual account.

*V.—Private Bills payable to Bearer on Demand.*

21. Prohibition of issue of private bills or notes payable to bearer on demand.
Exception in favour of cheques.
22. Penalty for issuing such bills or notes.
Prosecutions.
Recovery of fines.

*VI.—Miscellaneous.*

23. Monthly abstracts of accounts.
24. Description of notes in indictments.
25. Supplementary powers of the Government of India.
Schedule.

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## ACT No. III OF 1871.

*Received the Governor General's assent on the 20th January* 1871.

## An Act to consolidate and amend the law relating to the Government Paper Currency.

WHEREAS it is expedient to consolidate and amend the law relating to the Government Paper Currency; It is hereby enacted as follows:— Preamble.

*I.—Preliminary.*

1. This Act may be called "The Indian Paper Currency Act, 1871": Short title.
It extends to the whole of British India: Local extent.

2. The Acts mentioned in the schedule hereto annexed are repealed. Acts repealed.

All appointments made, rules prescribed, circles of issue established, notifications published, and notes issued under any such Act shall be deemed to

be respectively made, prescribed, established, published and issued under this Act.

*II.—The Department of Issue.*

Functions of Department of Issue.

3. There shall continue to be a Department of the public service, to be called the Department of Issue, whose function shall be the issue of promissory notes of the Government of India payable to bearer on demand, for such sums, not being less than five rupees, as the Governor General in Council from time to time directs.[a]

Head Commissioner. Commissioners at Madras and Bombay.

4. At the head of such Department shall be an officer called the Head Commissioner of the Department of Issue, and two other officers, called, respectively, the Commissioner of the Department of Issue at Madras and the Commissioner of the Department of Issue at Bombay.

Power to establish Circles of Issue.

5. The Governor General in Council may from time to time, by order published in the *Gazette of India*,

establish districts, to be called Circles of Issue, three of which circles shall include the towns of Calcutta, Madras and Bombay, respectively,

appoint in each circle some one town to be the place of issue of notes, as hereinafter provided,

establish in such town an office or offices of Issue, and

declare that, for the purposes of this Act, any such town (other than Calcutta, Madras or Bombay) shall be deemed to be situate within such Presidency as is specified in the order.

Deputy Commissioners.

6. For each Circle of Issue other than those which include the Towns of Calcutta, Madras and Bombay, there shall be an officer called the Deputy Commissioner of Issue.

Subordination of Commissioners and Deputy Commissioners.

7. For the purposes of this Act, the Commissioners at Madras and Bombay shall be subordinate to the Head Commissioner:

the Deputy Commissioners in the Presidency of Fort William in Bengal shall be subordinate to the Head Commissioner; and

the Deputy Commissioners in the Presidencies of Fort St. George and Bombay shall be subordinate to the Commissioners of Madras and Bombay respectively.

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[a] In exercise of this power the Governor General in Council has directed that promissory notes of the Government of India, payable to bearer on demand, shall be issued by the Department of Issue for the following sums:—

| | |
|---|---|
| Five Government Rupees. | One hundred Government Rupees. |
| Ten Government Rupees. | Five hundred Government Rupees. |
| Twenty Government Rupees. | One thousand Government Rupees. |
| Fifty Government Rupees. | Ten thousand Government Rupees. |

And in exercise of the power conferred by section 25, clause (3), the Governor General in Council has declared that notes for sums above noted shall be issued at all offices of issue appointed under this Act, *Gazette of India*, 3rd January 1874, p. 4.

8. All officers under this Act shall be appointed, and may be suspended or removed, by the Governor General in Council. Appointment, suspension, and removal of officers.

*III.—Supply and Issue of Currency Notes.*

9. The Head Commissioner of Issue shall provide promissory notes of the Government of India payable to bearer on demand, of the denominations prescribed under this Act, and shall supply the Commissioners at Madras and Bombay, and the several Deputy Commissioners with such notes as they require for the purposes of this Act. Head Commissioner to provide and distribute Currency notes.

All such notes shall bear upon them the name of the town from which they are severally issued, and shall be payable only— Notes where payable.

at the office or offices of Issue of such town and

at the presidency town of the Presidency within which such town is situate.

10. The name of the Head Commissioner, of either of the Commissioners, of a Deputy Commissioner, or of some other person authorized by the said Head Commissioner, or by either of the said Commissioners, to sign notes issued under this Act, shall be subscribed to every such note, and may be impressed thereon by machinery. Signatures to notes.

Names so impressed shall be taken to be valid signatures.

11. The Head Commissioner, the Commissioners, and the Deputy Commissioners shall, in their respective Circles of Issue, on the demand of any person, issue from the office or offices of Issue established in their respective circles, promissory notes of the Government of India payable to bearer on demand, of the denominations prescribed under this Act, on the terms following :— Issue of notes for silver.

(*a*) in exchange for the amount thereof in current silver coin of the Government of India, or,

(*b*) in exchange for the amount thereof in silver bullion or foreign silver coin at the rate of nine hundred and seventy-nine rupees per one hundred and eighty thousand grains of silver fit for coinage and of the standard fineness prescribed by the Indian Coinage Act, 1870 :

Provided that in all places where there is no Mint of the Government of India, any such Head Commissioner, Commissioner, or Deputy Commissioner may refuse to issue notes in exchange for silver bullion or foreign coin under this section. Proviso.

12 The Governor General in Council may from time to time, by order published in the *Gazette of India,* direct that notes to an extent to be specified in the order, not exceeding one-fourth of the total amount of issues represented by coin and bullion as herein provided, shall be issued at such offices of Issue Issue of note for gold.

as are named in the order, in exchange for gold coin of full weight of the Government of India or for foreign gold coin or gold bullion, at the rates and according to the rules and conditions fixed by such order.

Expense of melting and assaying bullion received for notes.

13. The Head Commissioner, Commissioners, and Deputy Commissioners may require any bullion or foreign coin received under section eleven or section twelve to be melted and assayed.

Loss of weight.

Any loss of weight caused by such melting or assay shall be borne by the person tendering the bullion or coin.

Certificates for bullion.

14. Every person so tendering bullion or foreign coin and depositing it in any office of Issue shall, after the expiration of the time necessary for melting and assaying the same, be entitled to receive therefor a certificate signed by the person authorized to issue the notes aforesaid.

Contents of certificate.

Such certificate shall—

(*a*) acknowledge the receipt of such bullion or foreign coin,

(*b*) state the amount of notes issued under this Act, or of such notes and cash, to which the holder is entitled in exchange for such bullion or coin,

(*c*) state the interval on the expiration of which, if the certificate be presented to such office, the holder shall be entitled to receive such amount.

Notes where legal tender.

15. Within any of the said Circles of Issue a note issued under this Act from any office of Issue in such circle, shall be a legal tender to the amount expressed in such note, in payment or on account of—

any revenue or other claim to the amount of five rupees and upwards due to the Government of India,[a]

any sum of five rupees and upwards due by the Government of India, or by any body corporate or person in British India:

Provided that no such note shall be deemed to be a legal tender by the Government of India at any Office of Issue.

*IV.—Reserve.*

Bullion received for notes to be kept as a reserve. Except amount fixed as minimum limit of circulation.

16. The whole amount of the coin and bullion received under this Act for notes shall be retained and secured as a reserve to pay such notes, with the exception of such an amount, not exceeding sixty millions of rupees, as the Governor General in Council, with the consent of the Secretary of State for India, from time to time fixes.

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[a] "The Governor General in Council directs that it be notified for general information that the payment of any sum of money which any one has to make to Government in any department can be made in Government notes of any issue irrespective of Presidency or Circle, and that all officers of Revenue, Customs, Tax Office, Railway, &c., are hereby authorized to receive payment in notes of any issue irrespective of Presidency or Circle," *Gazette of India*, 16th March 1872, p. 298.

17. The amount so fixed shall be published in the *Gazette of India*,[a] and the whole or such part thereof as the Governor General in Council from time to time fixes shall be invested in securities of the Government of India: the said coin, bullion and securities shall be appropriated and set apart to provide for the satisfaction and discharge of the said notes; and the said notes shall be deemed to have been issued on the security of such coin, bullion and securities, as well as on the general credit of the Government:

Investment of such amount.

Appropriation of coin, bullion and securities.

Provided that any silver bullion or foreign coin received under this Act may be sold or exchanged for silver coin of the Government of India, and that any gold coin or bullion received under this Act may be sold or exchanged for silver coin or bullion to be so appropriated and set apart instead of the gold coin or bullion.

Sale or exchange of bullion and foreign coin.

For the purposes of this section, silver bullion and coin shall be rated at ninety-eight rupees per eighteen thousand grains of standard fineness, and gold bullion and coin at the rates fixed by the Governor General in Council under section twelve.

18. The Government securities so purchased shall be held by the Head Commissioner and the Master of the Mint at Calcutta in trust for the Secretary of State for India in Council.

Trustees of securities purchased under Act.

19. The Head Commissioner may, at any time when ordered so to do by the Governor General in Council, sell and dispose of any portion of the above-mentioned limited amount of Government securities.

Power to sell such securities.

For the purpose of effecting such sales, the Master of the Mint at Calcutta shall, on a request in writing from the Head Commissioner, at all times sign and endorse such Government securities, and the said Head Commissioner, if so directed by the Governor General of India in Council, may purchase Government securities to replace such sales.

Power to replace them.

20. The interest accruing due on the securities purchased and held under this Act shall be entered in a separate account, to be annually rendered by the Head Commissioner to the Governor General in Council.

Interest on such securities to be entered in a separate account.

The amount of such interest shall from time to time, as it becomes due, be paid to the credit of the Government of India, under the head of "Profits of Notes Circulation,"

"Profits of Notes Circulation."

and an account showing the amount of such profits and of the charges and expenses incidental thereto, shall be made up and published annually in the *Gazette of India*.

Annual account.

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[a] Sixty millions of rupees, *Gazette of India*, 16th September 1871, p. 709.

### *V.—Private Bills payable to Bearer on Demand.*

Prohibition of issue of private bills or notes payable to bearer on demand.

**21.** No body corporate or person in British India, shall draw, accept, make or issue any bill of exchange, hundí, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe, or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand, of any such body corporate or of any such person:

Exception in favour of cheques.

Provided that cheques or drafts payable to bearer on demand or otherwise, may be drawn on bankers, shroffs, or agents, by their customers or constituents, in respect of deposits of money in the hands of such bankers, shroffs, or agents, and held by them at the credit and disposal of the persons drawing such cheques or drafts.

Penalty for issuing such bills or notes.

**22.** Any body corporate or person committing any offence under section twenty-one shall, on conviction before a Magistrate of Police or a person exercising the full powers of a Magistrate, be punished with a fine equal to the amount of the bill, hundí, note or engagement in respect whereof the offence is committed.

Prosecutions.

Every prosecution under this section shall be instituted by the Head Commissioner, Commissioner or Deputy Commissioner, as the case may be, of the Circle of Issue in which such bill, hundí, note or engagement is drawn, accepted, made or issued.

Recovery of fines.

All fines imposed under this section may be recovered, if for offences committed outside the local limits of the presidency towns, in the manner prescribed by the Code of Criminal Procedure, and, if for offences committed within those limits, in the manner prescribed by any Act regulating the Police of those towns in force for the time being.

### *VI.—Miscellaneous.*

Monthly abstracts of accounts.

**23.** An abstract of the accounts of the Department of Issue showing—

(*a*) the whole amount of notes in circulation,

(*b*) the amount of coin and bullion reserved, distinguishing gold from silver, and

(*c*) the amount of the Government securities held by the said Department,

shall be made up monthly in Calcutta, and published as soon as may be in the *Gazette of India.*

Description of notes in indictments.

**24.** All notes issued under this Act shall be deemed to be promissory notes of the Government of India, and may be described as promissory notes of the Government of India in all indictments, and in criminal and civil proceedings.

**25.** The Governor General in Council may from time to time, by notification in the *Gazette of India*— Supplementary powers of the Government of India.

(1) fix the amounts (not being less than five rupees) for which notes shall be issued under this Act,

(2) alter the limits of any of the said Circles of Issue,

(3) declare the places at which notes shall be issued under this Act,[a]

(4) fix the rates, rules and conditions at and according to which gold may be taken in exchange for Government promissory notes issued under this Act,

(5) fix the charge for melting and assaying bullion and foreign coin received for such notes,

(6) fix the interval on the expiration of which holders of certificates under section fourteen shall be entitled to receive such notes,

(7) regulate any matters relative to Paper Currency which are not provided for by this Act,

(8) revoke or alter any notification previously made under this Act.

Every such notification shall come into force on the day therein in that behalf mentioned, and shall have effect as if it were enacted in this Act:

Provided that no notification under clause (4) of this section shall have effect until six months have elapsed from the date of its appearance in the *Gazette of India.*

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## SCHEDULE.

| Number and year of Act. | Title. |
|---|---|
| XIX of 1861 ... | An Act to provide for a Government Paper Currency. |
| XXIV of 1861 ... | An Act to enable the Banks of Bengal, Madras and Bombay to enter into arrangements with the Government for managing the issue, payment and exchange of Government Currency Notes and certain business hitherto transacted by the Government Treasuries. |
| I of 1866 ... | An Act to amend Act XIX of 1861 (*to provide for a Government Paper Currency*). |
| XXX of 1867 ... | An Act to amend Act XIX of 1861 (*to provide for a Government Paper Currency*). |
| XV of 1870 ... | An Act for the further amendment of Act No. XIX of 1861. |

[a] See above, p. 1266, note.

# THE CORONERS' ACT, 1871.

## CONTENTS.

PREAMBLE.

CHAPTER I.—PRELIMINARY.

SECTION.
1. Short title.
Local extent.
2. [*Repealed*].

CHAPTER II.—APPOINTMENT OF CORONERS.

3. Coroners of Calcutta, Madras and Bombay.
4. Their appointment, suspension and removal.
Present Coroners.
5. Coroners to be public servants.
6. Power to hold other offices.
7. [*Repealed*].

CHAPTER III.—DUTIES AND POWERS OF CORONERS.

8. Jurisdiction to enquire into deaths.
9. Coroner to be sent for when prisoner dies.
Exception when death caused by cholera.
10. Power to hold inquests on bodies within local limits wherever cause of death occurred.
11. Power to disinter body.
12. Summoning jury.
Inquest may be on Sunday.
13. Opening Court.
14. Jurors to be sworn.
15. View of body.
16. Proclamation for witnesses.
17. Summoning witnesses.
18. *Post mortem* examinations.
Fees to medical witnesses.
19. Evidence to be on oath.
Evidence on behalf of accused.
Interpreter.
Questions suggested by jury.

SECTION.

20 Coroner to take down evidence in writing.
Witnesses to sign depositions.
Coroner to subscribe depositions.
21. Adjournment of inquest.
Jurors' recognizances.
22. Coroner to sum up to jury.
23. Coroner to draw up inquisition.
24. Contents of inquisition.
Form of inquisition.
25. Procedure when verdict amounts to murder, culpable homicide, or killing by negligence.
26. Coroner may issue warrant against accused.
27. Power to accept bail.
28. Warrant for burial.
29. Inquisitions not to be quashed for want of form.
30. Cessation of jurisdiction as to treasure trove, wreck, &c.
*Felo de se.*
Deodands abolished.

---

## CHAPTER IV.—CORONERS' JURIES.

31. Fine on juror neglecting to attend.
32. Certificate as to defaulting juror.
Service of copy of certificate.
33. Levy of fine.
34. Jurors not to be summoned twice in the year.
35. Jurors on inquests on prisoners.

---

## CHAPTER V.—RIGHTS AND LIABILITIES OF CORONERS.

36. Coroner's salary.
37. Disbursements to be repaid.
38. Power to appoint deputy.
Revocation of appointment.
39. Exemption from serving on juries.
40. Privilege from arrest.
41. Penalty for failure to comply with Act.
42. Proceedings barred by tender.

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FIRST SCHEDULE—[*Repealed.*]

SECOND SCHEDULE—Form of inquisition.

## ACT No. IV of 1871.

*Received the Governor General's assent on the 27th January* 1871.

# An Act to consolidate and amend the laws relating to Coroners.

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to Coroners in the Presidency Towns; It is hereby enacted as follows:—

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## CHAPTER I.—PRELIMINARY.

Short title.

1. This Act may be called "The Coroners' Act, 1871":

Local extent.

It extends to the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay.

2. [*Repealed by Act No. XII of* 1873.]

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## CHAPTER II.—APPOINTMENT OF CORONERS.

Coroners of Calcutta, Madras and Bombay.

3. Within the local limits of the ordinary original civil jurisdiction of each of the said High Courts, there shall be a Coroner. Such Coroners shall be called, respectively, the Coroner of Calcutta, the Coroner of Madras, and the Coroner of Bombay.

Their appointment, suspension and removal.

4. Every such officer shall be appointed and may be suspended or removed by the Local Government.

Present Coroners.

Every person now holding such office shall be deemed to have been appointed under this Act.

Coroners to be 'public servants.'

5. Every Coroner shall be deemed a public servant within the meaning of the Indian Penal Code.

Power to hold other offices.

6. Any Coroner may hold simultaneously any other office under Government.

7. [*Repealed by Act No. X of* 1873.]

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## CHAPTER III.—DUTIES AND POWERS OF CORONERS.

Jurisdiction to enquire into deaths.

8. When a Coroner is informed that the death of any person has been caused by accident, homicide, suicide, or suddenly by means unknown, or that any person being a prisoner has died in prison,

and that the body is lying within the place for which the Coroner is so appointed,

the Coroner shall enquire into the cause of death.

Every such enquiry shall be deemed a judicial proceeding within the meaning of section one hundred and ninety-three of the Indian Penal Code.

Coroner to be sent for when prisoner dies.

9. Whenever a prisoner dies in a prison situate within the place for which a Coroner is so appointed, the Superintendent of the prison shall send for the Coroner before the body is buried. Any Superintendent failing herein shall on conviction before a Magistrate be punished with fine not exceeding five hundred rupees.

Nothing in the former part of this section applies to cases in which the death has been caused by cholera or other epidemic disease.

Power to hold inquests on bodies within local limits wherever cause of death occurred.

10. Whenever an inquest ought to be holden on any body lying dead within the local limits of the jurisdiction of any Coroner, he shall hold such inquest, whether or not the cause of death arose within his jurisdiction.

Power to order body to be disinterred.

11. A Coroner may order a body to be disinterred within a reasonable time after the death of the deceased person, either for the purpose of taking an original inquisition where none has been taken, or a further inquisition where the first was insufficient.

Summoning jury.

12. On receiving notice of any death mentioned in section eight, the Coroner shall summon five, seven, nine, eleven, thirteen or fifteen respectable persons to appear before him at a time and place to be specified in the summons, for the purpose of enquiring when, how, and by what means the deceased came by his death.

Inquest may be on Sunday.

Any inquest under this Act may be held on a Sunday.

Opening Court.

13. When the time arrives, the Coroner shall proceed to the place so specified, open the Court by proclamation, and call over the names of the jurors.

Jurors to be sworn.

14. When a sufficient jury is in attendance, he shall administer an oath to each juror to give a true verdict according to the evidence, and shall then proceed with the jury to view the body.

View of body.

15. The Coroner and the jury shall view and examine the body at the first sitting of the inquest, and the Coroner shall make such observations to the jury as the appearance of the body requires.

Proclamation for witnesses.

16. The Coroner shall then make proclamation for the attendance of witnesses, or, where the enquiry is conducted in secret, shall call in separately such as know anything concerning the death.

Summoning witnesses.

17. It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses; the Coroner shall enquire of such circumstances, and the cause of the death; and if before or

during the enquiry he is informed that any person can give evidence material thereto, may issue a summons requiring him to attend and give evidence on the inquest.

Any person failing so to attend or give evidence shall be deemed to have committed an offence under section one hundred and seventy-four or one hundred and seventy-six of the Indian Penal Code, as the case may be.

For the purpose of causing prisoners to be brought up to give evidence, the Coroner shall be deemed a criminal Court within the meaning of Act No. XV of 1869 *(to provide facilities for obtaining the evidence and appearance of prisoners and for service of process upon them)*.

*Post mortem* examinations.

Fees to medical witnesses.

18. The Coroner may direct the performance of a *post mortem* examination, with or without an analysis of the contents of the stomach or intestines, by any medical witness summoned to attend the inquest: and every medical witness, other than the Chemical Examiner to Government, shall be entitled to such reasonable remuneration as the Coroner thinks fit.

Evidence to be on oath. Evidence on behalf of accused.

19. All evidence given under this Act shall be on oath, and the Coroner shall be bound to receive evidence on behalf of the party (if any) accused of causing the death of the deceased person.

Interpreter.

Witnesses unacquainted with the English language shall be examined through the medium of an interpreter, who shall be sworn to interpret truly as well the oath as the questions put to, and the answers given by, the witnesses.

Questions suggested by jury.

After each witness has been examined, the Coroner shall enquire whether the jury wish any further questions to be put to the witness, and if the jury wish that any such questions should be put, the Coroner shall put them accordingly.

Coroner to take down evidence in writing.

20. The Coroner shall commit to writing the material parts of the evidence given to the jury, and shall read or cause to be read over such parts to the witness and then procure his signature thereto.

Witnesses to sign depositions.

Any witness refusing so to sign shall be deemed to have committed an offence under section one hundred and eighty of the Indian Penal Code.

Coroner to subscribe depositions.

Every such deposition shall be subscribed by the Coroner.

Adjournment of inquest.

21. The Coroner may adjourn the inquest from time to time, and from place to place.

Jurors' recognizances.

Whenever the inquest is adjourned the Coroner shall take the recognizances of the jurors to attend at the time and place appointed, and notify to the witnesses when and where the inquest will be proceeded with.

The amount of such recognizances shall in each case be fixed by the Coroner.

22. When all the witnesses have been examined the Coroner shall sum up the evidence to the jury, and the jury shall then consider of their verdict.

Coroner to sum up to jury.

23. When the verdict is delivered the Coroner shall draw up the inquisition according to the finding of the jury, or, when the jury is not unanimous, according to the opinion of the majority.

Coroner to draw up inquisition.

24. Every inquisition under this Act shall be signed by the Coroner with his name and style of office and by the jurors, and shall set forth—

Contents of inquisition.

(1) where, when, and before whom the inquisition is holden,

(2) who the deceased is,

(3) where his body lies,

(4) the names of the jurors, and that they present the inquisition upon oath,

(5) where, when, and by what means the deceased came by his death, and

(6) if his death was occasioned by the criminal act of another, who is guilty thereof.

If the name of the deceased be unknown, he may be described as a certain person to the jurors unknown.

Every such inquisition shall be in the form set forth in the second schedule hereto annexed, with such variation as the circumstances of each case require.

25. When the verdict is that the death has been caused by culpable homicide amounting to murder, or by culpable homicide not amounting to murder, or by a rash or negligent act not amounting to culpable homicide, the Coroner shall bind by recognizance any person knowing or declaring anything material touching such murder, homicide, or act to appear at the next criminal sessions at which the trial is to be, then and there to prosecute or give evidence against the party charged.

Procedure where verdict amounts to murder, culpable homicide, or killing by negligence

The Coroner shall certify and subscribe such recognizances, and shall, immediately after the inquest, deliver them, together with the inquisition and evidence, to the proper officer of the Court in which the trial is to be.

Coroner to certify and deliver inquisition, depositions and recognizances.

26. The Coroner shall also, where the verdict justifies him in so doing, issue his warrant for the apprehension of the person accused and commit him to prison until he is thence discharged by due course of law, or, if he be already in prison, issue a detainer to the officer in charge of the jail in which he is.

Warrant against person accused.

27. In cases where the jury has found against any person a verdict of culpable homicide not amounting to murder or of killing by a rash or negli-

Power to accept bail.

gent act not amounting to culpable homicide, the Coroner may, if he thinks fit, accept bail with sufficient sureties for the appearance of such person at the next criminal sessions, and thereupon such person, if in custody of any officer of the Coroner's Court, or in any gaol under a warrant of commitment issued by the Coroner, shall be discharged therefrom.

Warrant for burial.

28. When the proceedings are closed, or before, if it be necessary to adjourn the inquest, the Coroner shall give his warrant for the burial of the body on which the inquest has been taken.

Inquisitions not to be quashed for want of form.

29. No inquisition found upon or by any inquest shall be quashed for any technical defect.

Amendment of inquisition.

In any case of technical defect, a Judge of the High Court may, if he thinks fit, order the inquisition to be amended, and the same shall forthwith be amended accordingly.

Cessation of jurisdiction as to treasure trove, wrecks, &c.

30. It shall no longer be the duty of the Coroner to enquire whether any person dying by his own act was or was not *felo de se*, to enquire of treasure trove or wrecks, to seize any fugitive's goods, to execute process, or to exercise as Coroner any jurisdiction not expressly conferred by this Act.

*Felo de se.*

A *felo de se* shall not forfeit his goods.

Deodands.

Deodands are hereby abolished.

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## Chapter IV.—*Coroners' Juries.*

Fine on juror neglecting to attend.

31. Whenever any person has been duly summoned to appear as a juror by a Coroner, and fails or neglects to attend at the time and place specified in the summons, the Coroner may cause him to be openly called in his Court three times to appear and serve as a juror; and upon the non-appearance of such person, and proof that such summons has been served upon him, or left at his usual place of abode, may impose such fine upon the defaulter, not exceeding fifty rupees, as to the Coroner seems fit.

Certificate as to defaulting juror.

32. The Coroner shall make out and sign a certificate, containing the name and surname, the residence and trade or calling of every person so making default, together with the amount of the fine so imposed, and the cause of such fine,

and shall send such certificate to one of the Magistrates of the place of which he is the Coroner,

Service of copy of certificate.

and shall cause a copy of such certificate to be served upon the person so fined, by having it left at his usual place of residence, or by sending the same through the Post Office, addressed as aforesaid and registered.

33. Thereupon such Magistrate shall cause the fine to be levied in the same manner as if it had been imposed by himself. Levy of fine.

34. Unless in case of necessity, no person who has appeared, or has been summoned to appear, as a juror on an inquest and has not made default, shall, within one year after such appearance or summons, be summoned to appear as a juror under this Act. Jurors not to be twice summoned within the year.

35. When an inquest is held on the body of a prisoner dying within a prison, no officer of the prison and no prisoner confined therein shall be a juror on such inquest. Jurors on inquest on prisoner.

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## CHAPTER V.—*Rights and Liabilities of Coroners.*

36. Every Coroner shall be entitled to such salary for the performance of the duty of his office as is prescribed in that behalf by the Governor General in Council. Coroner's salary.

37. All disbursements duly made by a Coroner for fees to medical witnesses, hire of rooms for the jury and the like, shall be repaid to him by the Local Government. Disbursements to be repaid.

38. Every Coroner may from time to time, with the previous sanction of the Local Government, appoint, by writing under his hand, a proper person to act for him as his deputy in the holding of inquests. Power to appoint deputy.

All inquests taken and other acts done by any such deputy, under or by virtue of any such appointment, shall be deemed to be the acts of the Coroner appointing him.

Provided that no such deputy shall act for any such Coroner except during the illness of the said Coroner, or during his absence for any lawful and reasonable cause.

Every such appointment may at any time be cancelled and revoked by the Coroner by whom it was made. Revocation of appointment.

39. No Coroner or Deputy Coroner shall be liable to serve as a juror. Exemption from serving on juries.

40. Coroners and Deputy Coroners shall be privileged from arrest while engaged in the discharge of their official duty. Privilege from arrest.

41. Any Coroner or Deputy Coroner failing to comply with the provisions of this Act, or otherwise misconducting himself in the execution of his office, shall be liable to such fine as the Chief Justice of the High Court, upon summary examination and proof of the failure or misconduct, thinks fit to impose. Penalty for failure to comply with Act.

42. No proceeding for anything done under this Act, or for any failure to comply with its provisions, shall be commenced or prosecuted after tender of sufficient amends. Proceedings barred by tender.

FIRST SCHEDULE.—[*Repealed by Act No. XII of* 1873.]

## SECOND SCHEDULE.

*Form of Inquisition.*

AN INQUISITION taken at on the day of 187 , before E F, Coroner of , on view of the body of A B then and there lying dead, upon the oath of G H, I J, K L and M N, then and there duly sworn and charged to enquire when, how, and by what means the said A B came to his death.

We, the said jurors, find unanimously [*or* by a majority of ] that the death of the said A B was caused, on or about the day of 187 , by [*here state the cause of death as in the following examples*—

1. *Cases of homicide*]—a blow on the head with a stick inflicted on him by C D, under such circumstances that the act of C D was justifiable [*or* accidental] homicide.
—a stab on the heart with a knife inflicted on him by C D, under such circumstances that the act of C D was culpable homicide not amounting to murder [*or* culpable homicide amounting to murder, *or* a rash *or* negligent act not amounting to culpable homicide].
2. *Cases of accident*]—falling out of a boat into the river Hugli, whereby he was drowned.
—a kick from a horse which fractured his skull and ruptured blood-vessels in his head.
3. *Cases of suicide*]—shooting himself through the head with a pistol.
—arsenic, which he voluntarily administered to himself.
4. *Cases of sudden death by means unknown*]—disease of the heart.
—apoplexy.
—sunstroke.

And so say the jurors upon their oath aforesaid.

Witness our hands. E F, Coroner of

G H, I J, K L, M N, O P (jurors).

# THE PRISONERS' ACT, 1871.

## CONTENTS.

PREAMBLE.

SECTIONS.

I.—PRELIMINARY.

1. Short title.
   Local extent.
2. [*Repealed.*]

II.—PRISONERS IN THE PRESIDENCY TOWNS.

3. Warrants and writs to be directed to Police officers.
4. Power to appoint Superintendents of Presidency Prisons.
5. Superintendents to detain persons committed.
6. Superintendents to return writs, &c., after execution or discharge.
7. Delivery of persons sentenced to imprisonment or death.
8. Delivery for intermediate custody of persons sentenced to transportation or penal servitude.
9. Order under Mutiny Act for intermediate custody.
10. Committals by High Court in execution of a decree or for contempt.
11. Delivery of persons sentenced by Police Magistrate.
12. Delivery of persons committed by Justice or Magistrate or Coroner for trial by High Court.
13. Custody pending enquiries under Act XXIII of 1861, section 8.
14. Delivery of persons arrested in pursuance of warrant of High Court or Small Cause Court.
15. Warrants under Regulations for confinement of State prisoners.

III.—PRISONERS IN THE MOFUSSIL.

16. Officers in charge of prisons may give effect to sentences of certain Courts.
17. Warrant of officer of such Court to be sufficient authority.
18. Procedure where jailor doubts the legality of warrant sent to him for execution.
19. Imprisonment in British India of persons convicted of certain offences in Native States.
    Proviso.
20. Certificate of conviction.
    Copy of proceedings.

IV.—CONVICTS SENTENCED TO PENAL SERVITUDE.

21. Persons sentenced to penal servitude where sent, and how dealt with.
    Intermediate imprisonment.
    Time of intermediate imprisonment to count in discharge of sentence.

SECTION.

22. Law respecting convicts sentenced to transportation or imprisonment with hard labour applied to persons sentenced to penal servitude.
23. Power to grant license to convict sentenced to penal servitude.
24. Holder of license to be allowed to go at large.
25. Apprehension of convict where license revoked.
26. Execution of warrant.
27. Apprehended convict to be brought up for re-commitment.
28. Re-commitment.
29. Penalty for breach of condition of the license.

V.—REMOVAL OF PRISONERS.

30. Removal from one jail to another in territories under Local Government.
31. Removal of lunatic prisoners.
Remand on recovery.
Discharge.
Act XXXVI of 1858, section 9, applied to prisoners in lunatic asylum.
32. Government of India may order removal of prisoners from one prison to another.

VI.—MANAGEMENT OF TRANSPORTED CONVICTS.

33. Power to appoint persons to whom convicts shall be delivered.
34. Power to make rules as to convicts.

VII.—DISCHARGE OF CONVICTS.

35. Discharge of convicts recommended for pardon.

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## ACT No. V OF 1871.

*Received the Governor General's assent on the 27th January* 1871.

## An Act to consolidate the laws relating to Prisoners confined by order of a Court.

Preamble.

FOR the purpose of consolidating the laws relating to prisoners confined by order of a Court; It is hereby enacted as follows:—

### I.—PRELIMINARY.

Short title.

1. This Act may be called "The Prisoners' Act, 1871:"

Local extent.

It extends to the whole of British India.[a]

2. [*Repealed by Act No. XII of* 1873.]

### II.—PRISONERS IN THE PRESIDENCY TOWNS.

Warrants and writs to be directed to Police officers.

3. All writs or warrants for the arrest or apprehension of any person, issued or awarded by the High Court in the exercise of its ordinary, extra-

[a] It has also been applied to the Haidarábád Assigned Districts, Foreign Department Notification No. 67J, dated 5th May 1871.

ordinary, or other criminal jurisdiction, shall be directed to and executed by any officer of Police within the local limits of such jurisdiction.

**4.** The Local Government may appoint officers who shall have authority to receive and keep prisoners committed to their custody under the provisions of this Part.

Power to appoint Superintendents of Presidency Prisons.

All such officers appointed under any Act hereby repealed, shall be deemed to be appointed under this Act.

Such officers shall be called, in Calcutta, the Superintendent of the Presidency Prison, in Madras, the Superintendent of Prisons for the town of Madras, and in Bombay,[a] by such title or respective titles as the Local Government from time to time directs.

Every such officer is hereinafter referred to as 'the Superintendent.'

**5.** The Superintendent is hereby authorized and required to keep and detain all persons duly committed to his custody pursuant to the provisions of this Act, or otherwise, by any Court, Judge, Justice of the Peace, Magistrate of Police, Coroner, or other public officer lawfully exercising civil or criminal jurisdiction according to the exigency of any writ, warrant or order by which such person has been committed, or until such person is discharged by due course of law.

Superintendents to detain persons committed.

**6.** The Superintendent shall forthwith after the execution of every such writ, order, or warrant, except warrants of commitment for trial, or after the discharge of the person committed thereby, return such writ, order, or warrant to the Court or other officer by which or by whom the same has been issued or made, together with a certificate endorsed thereon and signed by the Superintendent, showing how the same has been executed, or why the person committed thereby has been discharged from custody before the execution thereof.

Superintendents to return writs, &c., after execution or discharge.

**7.** Whenever any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to imprisonment or to death, the Court shall cause him to be delivered to the said Superintendent, together with the warrant of the said Court, and such warrant shall be executed by the Superintendent and returned by him to the High Court when executed.

Delivery of persons sentenced to imprisonment or death.

**8.** Whenever any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to transportation or penal servitude, the Court shall cause him to be delivered for intermediate custody to the Superintendent, and the imprisonment of such person shall have effect from such delivery.

Delivery for intermediate custody of persons sentenced to transportation or penal servitude.

**9.** Whenever any Judge of a High Court makes, under any Act for the time being in force for punishing mutiny and desertion and for the better

Order under Mutiny Act

[a] See *Bombay Government Gazette*, 4th December 1873, p. 999.

for intermediate custody.

payment of the Army and their quarters, an order for the intermediate custody of an offender sentenced by a Court Martial holden in India, the Judge shall order such offender to be detained for intermediate custody by the Superintendent.

Committals by High Court in execution of a decree or for contempt.

10. Whenever any person is committed by the High Court, whether in execution of a decree or for contempt of Court, or other cause, he shall be taken by the officer to be appointed for that purpose by such Court, and shall be delivered to the Superintendent, together with a warrant of commitment.

Delivery of persons sentenced by Police Magistrate.

11. Whenever any person is sentenced by a Magistrate of Police for the town of Calcutta, Madras, or Bombay, to imprisonment, either absolutely or for default of payment of any fine imposed by any such Magistrate, or is committed to prison for failure to find security to keep the peace and to be of good behaviour, the Magistrate shall cause him to be delivered to the Superintendent, together with a warrant of the Court.

Delivery of persons committed by Justice or Magistrate or Coroner for trial by High Court.

12. Every person committed by a Justice of the Peace or Magistrate or Coroner for trial by the High Court in the exercise of its original criminal jurisdiction shall be delivered to the Superintendent, together with a warrant of commitment, directing him to have the body of such person before the Court for trial, and the Superintendent shall, as soon as practicable, cause such person to be taken before the Court at a Criminal Session of the said Court, together with the warrant of commitment, in order that he may be dealt with according to law.

Custody, pending enquiries under Act XXIII of 1861, section eight.

13. Pending any such enquiry as is mentioned in section eight of Act No. XXIII of 1861 *(to amend Act VIII of* 1859*)*, which the High Court considers it necessary to make, the defendant may be delivered by the officer of the said Court to the Superintendent, subject to the provisions as to deposit of fees and as to release on security contained in the same section,

and the Superintendent is hereby authorized and required to detain such defendant in safe custody until he is re-delivered to the officer of the Court for the purpose of being taken before the said Court in pursuance of an order of the said Court or of a Judge thereof, or until he is released by due course of law.

Delivery of persons arrested in pursuance of warrant of High Court or Small Cause Court.

14. Every person arrested in pursuance of a writ, warrant, or order of the High Court, in the exercise of its original civil jurisdiction,

or in pursuance of a warrant of any Court established in Calcutta, Madras, or Bombay under Act No. IX of 1850 *(for the more easy recovery of small debts and demands in Calcutta, Madras and Bombay)*,

or in pursuance of a warrant issued under section three of this Act,

shall be brought without delay before the Court by which, or by a Judge of which, the writ, warrant, or order was issued, awarded, or made, or before a Judge thereof, if the said Court, or a Judge thereof, is then sitting for the exercise of original jurisdiction;

and if such Court, or a Judge thereof, is not then sitting for the exercise of original jurisdiction, shall, unless a Judge of the said Court otherwise orders, be delivered to the Superintendent for intermediate custody, and shall be brought before the said Court, or a Judge thereof, at the next sitting of the said Court, or of a Judge thereof, for the exercise of original jurisdiction, in order that such person may be dealt with according to law;

and the said Court or Judge shall have power to make or award all necessary orders or warrants for that purpose.

Warrants under Regulations for confinement of State prisoners.

**15.** Any warrant of commitment under Regulation III of 1818 of the Bengal Code *(for the Confinement of State Prisoners)*, Regulation II of 1819 of the Madras Code *(for the Confinement of State Prisoners)*, and Regulation XXV of 1827 of the Bombay Code *(for the Confinement of State Prisoners, and for the Attachment of the Lands of Chieftains and others, for Reasons of State)*, may be directed to the Superintendent in the same manner as the same might have been directed to the Sheriff under Act No. XXXIV of 1850 *(for the better Custody of State Prisoners)*, and Act No. III of 1858 *(to amend the Law relating to the arrest and detention of State Prisoners)*.

### III.—Prisoners in the Mofussil.

Officers in charge of prisons may give effect to sentences of certain Courts.

**16.** Officers in charge of prisons situate outside the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at Fort William, Madras and Bombay, shall be competent to give effect to any sentence or order or warrant for the detention of any person passed or issued by any Court or tribunal acting under the authority of Her Majesty, or of the Governor General in Council, or of any Local Government.

Warrant of officer of such Court to be sufficient authority.

**17.** A warrant under the official signature of an officer of such Court or tribunal shall be sufficient authority for holding any prisoner in confinement, or for sending any prisoner for transportation beyond sea, in pursuance of the sentence passed upon him.

Procedure where jailor doubts the legality of warrant sent to him for execution.

**18.** Any officer in charge of a prison doubting the legality of any warrant sent to him for execution under this Part, or the competency of the person whose official seal and signature are affixed thereto to pass the sentence and issue such warrant, shall refer the matter to the Local Government, by whose order on the case such officer and all other public officers shall be guided as to the future disposal of the prisoner.

Pending any such reference, the prisoner shall be detained in such manner and with such restrictions or mitigations as may be specified in the warrant.

Imprisonment in British India of persons convicted of certain offences in Native States.

19. The Local Government may authorize the reception, detention, or imprisonment in any place under such Government, for the periods specified in their respective sentences, of persons sentenced within the territories of any Native Prince or State in alliance with Her Majesty to imprisonment or transportation for any of the following offences :—

counterfeiting coin,
uttering counterfeit coin,
murder,
culpable homicide not amounting to murder,
being a thug,
voluntarily causing grievous hurt,
administering poison,
kidnapping,
selling minors for purposes of prostitution,
rape,
robbery,
dacoity,
dacoity with murder,
robbery or dacoity with attempt to cause death or grievous hurt,
attempt to commit robbery or dacoity when armed with a deadly weapon,
making preparation to commit dacoity,
belonging to a gang of dacoits,
dishonest misappropriation of property,
breach of trust,
house-burning,
house-breaking,
forgery, and
theft of cattle;
or for an attempt to commit any of the above offences,

or for abetment, within the meaning of the Indian Penal Code, of suicide by burning or burying alive, or of any of the other offences above specified,

or for such other offences as the Governor General in Council, from time to time, by order published in the *Gazette of India*, thinks fit to prescribe :[a]

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[a] Under this section, and with reference to section 11 of Act No. XI of 1872 (*the Foreign Jurisdiction and Extradition Act*, 1872), the Governor General in Council has notified that the provisions of section 19 of Act No. V of 1871 shall apply to offences against any of the sections of the Indian Penal Code mentioned in schedule II of Act No. XI of 1872, Foreign Department Notification No. 158 J, dated 12th August 1872.

Provided that such sentences have been pronounced after trial before a tribunal in which an officer of Government, duly authorized in that behalf by such Native Prince or State, or by the Governor General in Council, is one of the presiding Judges. Proviso.

20. Every officer of Government so authorized as aforesaid shall forward with every prisoner a certificate of his conviction, and a copy of the proceedings held at the trial, that the same may be forthcoming for reference at the place where the sentence of imprisonment or transportation is carried into effect. Certificate of conviction. Copy of proceedings.

IV.—Convicts sentenced to Penal Servitude.

21. Every person sentenced to be kept in penal servitude may, during the term of the sentence, be confined in such prison within British India as the Governor General in Council by general order, from time to time, directs; Persons sentenced to penal servitude where sent, and how dealt with.

and may, during such time, be kept to hard labour;

and may, until he can conveniently be removed to such prison, be imprisoned, with or without hard labour, and dealt with in all other respects as persons sentenced by the convicting Court to rigorous imprisonment may, for the time being, by law be dealt with. Intermediate imprisonment.

The time of such intermediate imprisonment, and the time of removal from one prison to another, shall be taken and reckoned in discharge or part discharge of the term of the sentence. Time of intermediate imprisonment to count in discharge of sentence.

22. All Acts and Regulations now in force within British India, with respect to convicts under sentence of transportation, or under sentence of imprisonment with hard labour, shall, so far as may be consistent with the express provisions of this Act, be construed to apply to persons under any sentence of penal servitude. Law respecting convicts sentenced to transportation or imprisonment with hard labour applied to persons sentenced to penal servitude.

23. The Governor General in Council may grant to any convict sentenced to be kept in penal servitude, a license to be at large within British India or in such part thereof as in such license is expressed, during such portion of his term of servitude and upon such conditions as to the Governor General in Council seem fit. Power to grant license to convict sentenced to penal servitude.

The Governor General in Council may at any time revoke or alter such license.

24. So long as such license continues in force and unrevoked, such convict shall not be liable to imprisonment or penal servitude by reason of his sentence, but shall be allowed to go and remain at large according to the terms of such license. Holder of license to be allowed to go at large.

Apprehension of convict where license revoked.

25. In case of the revocation of any such license as aforesaid, any Secretary to the Government of India may, by order in writing, signify to any Justice of the Peace or Magistrate that such license has been revoked, and require him to issue a warrant for the apprehension of the convict to whom such license was granted, and such Justice or Magistrate shall issue his warrant accordingly.

Execution of warrant.

26. Such warrant may be executed by any officer to whom it may be directed or delivered for that purpose in any part of British India, and shall have the same force in any place within British India as if it had been originally issued or subsequently endorsed by the Justice of the Peace, or Magistrate, or other authority having jurisdiction in the place where the same is executed.

Apprehended convict to be brought up for re-commitment.

27. The convict, when apprehended under such warrant, shall be brought, as soon as conveniently may be, before the Justice or Magistrate by whom it has been issued, or before some other Justice or Magistrate of the same place, or before a Justice or Magistrate having jurisdiction in the district in which the convict is apprehended.

Such Justice or Magistrate shall thereupon make out his warrant under his hand and seal, for the recommitment of the convict to the prison from which he was released by virtue of the said license.

Re-commitment.

28. Such convict shall be re-committed accordingly, and shall thereupon be liable to be kept in penal servitude for such further term as, with the time during which he may have been imprisoned under the original sentence and the time during which he may have been at large under an unrevoked license, is equal to the term mentioned in the original sentence.

Penalty for breach of condition of the license.

29. If a license be granted under section twenty-three upon any condition specified therein, and the convict to whom the license is granted violates any such condition,

or goes beyond the limits specified in the license,

or, knowing of the revocation of such license, neglects forthwith to surrender himself, or conceals himself, or endeavours to avoid being apprehended,

he shall be liable upon conviction to be sentenced to penal servitude for a term not exceeding the full term of penal servitude mentioned in the original sentence.

## V.—Removal of Prisoners.

Removal from one jail to another in

30. When any person is, or has been, sentenced to imprisonment by any Court, the Local Government, or (subject to its orders and under its control)

the Inspector General of Jails, may order his removal during the period prescribed for his imprisonment, from the jail or place in which he is confined to any other jail or place of imprisonment within the territories subject to the same Local Government.

territories under Local Government.

**31.** Whenever it appears to the Local Government that any person, detained or imprisoned under any order or sentence of any Magistrate or Court is of unsound mind, such Government, by a warrant setting forth the grounds of belief that such person is of unsound mind, may order his removal to a lunatic asylum, or other fit place of safe custody, within the territories subject to the same Government, there to be kept and treated as the Local Government directs during the remainder of the term of imprisonment ordered by the sentence; or, if it be certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be detained under medical care or treatment, then until he is discharged according to law.

Removal of lunatic prisoners.

When it appears to the said Government that such prisoner has become of sound mind, the Local Government, by a warrant directed to the person having charge of the prisoner, shall remand the prisoner to the prison from which he was removed, if then still liable to be kept in custody, or if not, shall order him to be discharged.

Remand on recovery.

Discharge.

The provisions of section nine of Act XXXVI of 1858 *(relating to Lunatic Asylums)* shall apply to every person confined in a lunatic asylum under this section after the expiration of the term of imprisonment to which he has been sentenced; and the time during which he has been so confined shall be reckoned as part of such term.

Act XXXVI of 1858, section nine, applied to prisoners in lunatic asylum.

**32.** When any person is, or has been, sentenced to imprisonment[a] by any Court, the Governor General in Council may order his removal during the period prescribed for his imprisonment, from the prison in which he is confined to any other prison in British India.

Government of India may order removal of prisoners from one prison to another.

## VI.—Management of Transported Convicts.

**33.** The Governor General in Council may appoint the Governor or other authority at any place in British India, or one or more Superintendents at any such place, as the persons to whom convicts undergoing transportation shall be delivered.

Power to appoint persons to whom convicts shall be delivered.

**34.** The Governor General in Council may, from time to time, prescribe rules as to the following matters:—

Power to make rules as to convicts.

the classification of convicts;

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[a] No provision is here made for persons sentenced to penal servitude. As to soldiers sentenced by Court Martial, see the Mutiny Act, s. 31.

their confinement, treatment, discipline, and employment;

their punishment for misbehaviour, disorderly conduct, neglect, or disobedience; and

the manner in which the proceeds (if any) of their employment shall be disposed of.

VII.—DISCHARGE OF CONVICTS.

Discharge of convicts recommended for pardon.

35. Any Court established under the twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four, may in any case in which it has recommended to Her Majesty the granting of a free pardon to any convict, permit him to be at liberty on his own recognizance.

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# THE INDIAN EMIGRATION ACT.

## CONTENTS.

PREAMBLE.

I.—PRELIMINARY.

SECTION.

1. Short title.
   Local extent.
2. Acts repealed.
3. Interpretation-clause.

II.—EMIGRATION AGENTS.

4. Appointment of Emigration Agents.
5. Remuneration of Agents.

III.—PROTECTORS OF EMIGRANTS AND MEDICAL INSPECTORS.

6. Appointment of Protectors of Emigrants.
7. No Protector to hold other office without permission.
8. General duties of Protectors of Emigrants.
   Inspecting vessels with return emigrants.
9. Appointment of Medical Inspector.
10. Depôts to be established in presidency towns.
11. Licensing of depôts.
12. Inspection by Protector and Medical Inspector.
13. Report to be made by Medical Inspector.
14. Protectors and Medical Inspectors to be public servants.
15. And to have facilities for inspections, &c.

IV.—RECRUITERS OF EMIGRANTS.

16. Protector of Emigrants to license recruiters.
17. Recruiter's license.

SECTION.

18. Duration and cancelment of license.
19. Form of license, and fee therefor.
20. Recruiter to wear badge.
21. Countersignature of recruiter's license.

V.—CONTRACTS WITH EMIGRANTS.

22. Contracts for labour out of India unlawful, except under this Act.
23. Places for emigration to which contracts may be made with Natives.
24. Power to legalize emigration to other places.
Proviso.
25. Contracts may be made for emigration to such other places.
26. From what ports emigration lawful.

VI.—REGISTRATION OF EMIGRANTS.

27. Natives engaging to emigrate to appear before Magistrate.
Examination and registration.
28. Copy of registration to be sent to Emigration Agent and Protector.
29. Registration of Emigrants recruited in presidency towns.
30. Copy of registration by Protector to be forwarded to Agent.
31. Fee for registration.

VII.—CONVEYANCE OF EMIGRANTS TO DEPÔTS.

32. Conveyance of emigrant to depôt.
Emigrants to be accompanied by recruiter.
Recruiter to provide suitable food and lodging.

VIII.—ARRIVAL AT DEPÔTS AND PROCEDURE THEREON.

33. Arrival at depôt to be reported.
34. Copy of registration to be shown to Medical Inspector.
Emigrants to be inspected by him.
35. When emigrant to be sent back to place of registration.
36. Failure of Emigration Agent to pay sum required to enable emigrant to return.
37. Duty of Emigration Agent.
Refusal of Agent, without consent of Protector, to be bound by contract made by recruiter.
Suits against Emigration Agent.
38. After examination and Medical Inspector's certificate, Emigration Agent to grant a pass.
39. Protector of Emigrants to attend personally at examination and passing.
And to countersign pass.

IX.—EMIGRANT VESSELS.

40. Emigrant not to be received on board unlicensed vessel.
Application for license.

SECTION.

Contents of license.
Survey of vessel.
Report after survey, and certificate to Master.
Bond to be executed by Master.
41 Space and accommodation required on board.
42 Provisions, fuel and water.
Surgeon, medicines and stores.
Supply of water for vessel calling at intermediate port.
Supply in vessel fitted with distilling apparatus.
Protector and Inspector of Emigrants to ensure compliance with above provisions.
43. Supply of extra clothing.
44. Certificates from Protector of Emigrants and from Emigration Agent.

X.—EMBARKATION.

45. Emigrants refusing to embark.
Proviso.
46. Time of sailing for places east of Cape of Good Hope.
For other places.
47. Emigrant unfit to undertake voyage.
48. Provisions of Act to be explained.
49. Procedure on embarkation.
Emigrant to give his pass to Master.
Protector to be personally present.
Examination by Medical Inspector.
One copy of list of emigrants given to Protector, to be signed and returned to Master.
Emigrant without pass not to remain on board.
Pass to be returned to Emigrant on arrival at place of destination.
50. Copy of list of emigrants to be signed by Emigration Agent and returned to Master.
And by him to be delivered at place of destination.
51. Protector to send list of emigrants to Government of place to which they sail.
52. Vessel sailing from Calcutta to depart within twenty-four hours of embarkation.
53. Vessels sailing from Calcutta to be towed to sea.
54. Copies of Act and rules to be kept on board.
55. Taking emigrants for Seychelles to quarantine-station of Mauritius.

XI.—SUPPLEMENTARY POWERS.

56. Power of the Governor General in Council to make rules.
57. Power to prohibit emigration to any place to which emigration is allowed.
58. Emigration to place mentioned to be suspended.
59. During suspension, laws against emigration to be in force as to place specified.

SECTION.

60. Revocation of suspension.
61. Power to prohibit emigration.
62. Power to increase fees.

XII.—SPECIAL PROVISIONS AS TO FRENCH COLONIES.

63. Nomination of Agents for presidency towns.
Proviso.
64. Powers of Agents.
65. Operations of recruitment.
66. Protector of Emigrants.
67. Contracts of service, with certain exceptions, to be made in India.
Effect of contract.
68. Matters to be provided for in contract.
69. Power to extend Act to French Colonies not expressly named.
70. Vessel to carry European Surgeon and Interpreter.

XIII.—PENALTIES.

71. For making unlawful contract of labour.
72. For recruiting without being licensed.
73. For recruiter failing to take engaged labourers before Magistrate or Protector.
For fraudulently inducing labourer to contract.
For not supplying proper food.
For not taking emigrant to depôt.
74. For forwarding emigrants, or allowing them to go, without being duly registered.
75. For false representation of Government authority.
76. For receiving emigrants in unlicensed vessel.
77. For clearing ship without complying with rules.
78. For taking on board after clearance, emigrants not entered in list.
79. For fraudulent acts whereby certificate becomes inapplicable to vessel.
80. For proceeding to sea without steam.
81. Customs officers may search and detain for purposes of this Act.
82. Prosecutions under this Act where and how instituted.
Mode of recovering fines.

XIV.—MISCELLANEOUS.

83. Probable length of voyages to places mentioned in section 23.
84. Notification legalizing emigration to new place to give probable length of voyages thither.
85. Exercise of powers of Magistrate of the District under this Act.
86. Act and rules made under it not to apply to certain vessels.
First Schedule (Acts repealed).
Second Schedule (Form of Recruiter's license).
Third Schedule (Convention as to Emigration to French Colonies).

## ACT No. VII of 1871.

*Received the Governor General's assent on the* 10*th March* 1871.

# An Act to consolidate the laws relating to the Emigration of Native labourers.[a]

Preamble.

WHEREAS it is expedient to consolidate the laws relating to the Emigration of Native labourers;

It is hereby enacted as follows:—

### I.—Preliminary.

Short title.

1. This Act may be called "The Indian Emigration Act, 1871:"

Local extent.

It extends to the whole of British India.

Acts repealed.

2. The Acts mentioned in the first schedule hereto annexed are repealed. All contracts entered into, appointments made, and licenses granted, under any of the said Acts, shall be deemed to be respectively entered into, made and granted under this Act.

Interpretation-clause.

3. In this Act—

"Emigrate."

"Emigrate" denotes the departure of any Native of India out of British India for the purpose of labouring for hire in some other place; and the

"Emigrant."

word "emigrant" denotes any Native of India under engagement to emi-

"Magistrate."

"Magistrate" denotes any officer exercising the full powers of a Magistrate and in charge of a district, a division, or a sub-division:

"Vessel."

"Vessel" includes anything made for the conveyance by water of human beings or property.

### II.—Emigration Agents.

Appointment of Emigration Agents.

4. The Government of every place to which emigration is lawful under this Act may, from time to time, appoint a person to act as Emigration Agent in Calcutta, Madras and Bombay respectively, but such nomination shall be subject to the approval of the Local Government.

Every Emigration Agent may be suspended or removed by the Government which appointed him.

Remuneration of Agents.

5. The remuneration to be given to Emigration Agents shall not depend upon, or be regulated by, the number of emigrants sent by such Agents, but shall be in the nature of a fixed annual salary.

### III.—Protectors of Emigrants and Medical Inspectors.

Appointment of Protectors of Emigrants.

6. The Local Government may appoint a proper person to act as Protector of Emigrants at each of the three ports aforesaid, and may, with the

[a] See Act No. XIV of 1872.

sanction of the Governor General in Council, assign to such person such salary and establishment as shall be deemed proper.

Every Protector of Emigrants may be suspended or removed by the Local Government to which he is subordinate.

7. No Protector of Emigrants appointed under this Act shall, except with the permission of the Local Government, hold any other office under Government, or follow any other profession or occupation.

No Protector to hold other office without permission.

8. Every Protector of Emigrants, in addition to any special duties assigned to him by this Act, shall, so far as is in his power, generally protect and aid with his advice or otherwise all emigrants, and shall cause all the provisions of this Act to be duly complied with.

General duties of Protectors of Emigrants.

He shall also inspect on arrival all vessels bringing return emigrants to the port at which he is Protector, and enquire into the treatment received by such emigrants both during the period of their service in the place to which they emigrated and also during the voyage, and shall make a report thereon to the Local Government,

Inspecting vessels with return emigrants.

and he shall aid and advise such return emigrants so far as he reasonably can when called upon by them to do so.

9. At each of the three ports aforesaid, the Local Government may appoint a competent person to be Medical Inspector of Emigrants; and may, with the sanction of the Governor General in Council, assign to the Medical Inspector so appointed such salary as is deemed proper.

Appointment of Medical Inspector.

10. In each of the towns of Calcutta, Madras and Bombay, or in the suburbs of those towns, the Emigration Agent of every place to which emigration is lawful under this Act, shall establish a suitable depôt for the persons engaged as labourers for such place.

Depôts to be established in presidency towns.

11. Every depôt shall be licensed by the Protector of Emigrants, after being inspected and approved of by him and by the Medical Inspector of Emigrants.

Licensing of depôts.

No license shall be in force for a longer period than a year, and any license may be cancelled by the Protector of Emigrants if he considers that the depôt for which it was granted is unhealthy or in any respect has become unsuitable for the purpose for which the depôt was established.

For every license granted under this section there shall be paid to the Protector a fee of fifteen rupees.

12. Every Protector of Emigrants and every Medical Inspector of Emigrants shall from time to time, and at least once in every week, inspect the emigrants in the various depôts for the reception of emigrants about to embark from the port at which they are Protector and Medical Inspector

Inspection by Protector and Medical Inspector.

respectively, and examine into the state of the depôts, and the manner in which the emigrants are therein lodged, fed, clothed and otherwise provided for and attended to.

Report to be made by Medical Inspector.

13. The Medical Inspector shall report to the Protector of Emigrants any circumstance which may come to his knowledge, showing that the depôt is not suitable for its purpose, or that the emigrants are treated with any neglect or oppression.

Protectors and Medical Inspectors to be public servants.

14. Every Protector of Emigrants and every Medical Inspector of Emigrants shall be a public servant within the meaning of the Indian Penal Code.

And to have facilities for inspections, &c.

15. Every Emigration Agent, and all persons in charge of or employed in any depôt, or in any vessel licensed to carry emigrants as hereinafter provided, shall give the Protector and the Medical Inspector every facility for making such inspections, examinations and surveys as may be necessary or proper under this Act, and shall afford them all such information as may be reasonably required by them.

## IV.—Recruiters of Emigrants.

Protector of Emigrants to license recruiters.

16. The Protector of Emigrants at each of the three ports aforesaid, and the British Consular Agent at each of the French ports in India, shall license so many fit persons as to him seems necessary, to be Recruiters of labourers,

and no person shall act or be employed as a Recruiter of labourers except under a license from a Protector of Emigrants or British Consular Agent.

Recruiter's license.

17. Every Recruiter shall be licensed to obtain labourers for some particular place to which emigration is lawful under this Act, and no license to obtain labourers for any place shall be granted except on the application of the Emigration Agent of such place.

Duration and cancelment of license.

18. No license shall be in force for a longer period than one year; and in case of misconduct on the part of any Recruiter, the Protector of Emigrants may cancel his license before the expiration of the period for which it was granted.

Form of license, and fee therefor.

19. Every license shall be in the form set forth in the second schedule hereto annexed.

For every license there shall be paid to the Protector a fee of fifteen rupees.

Recruiter to wear badge.

20. Every person holding a license as a Recruiter of labourers shall wear a badge bearing the following inscription in English and in the vernacular language of the town, district or districts in which he is licensed to engage

labourers :—" Recruiter of Emigrants for the Mauritius" (*or other place, as the case may be*).

**21.** No Recruiter shall engage or attempt to engage labourers in any district or in the towns of Calcutta, Madras or Bombay, without having first exhibited his license to the Magistrate of such district, or a Magistrate of such town, and obtained the countersignature of such Magistrate thereupon.

Countersignature of Recruiter's license.

Such countersignature shall be given, provided that the license is in force at the time.

V.—CONTRACTS WITH EMIGRANTS.

**22.** Except under and in conformity with the provisions of this Act, it shall not be lawful to make any contract with any Native of India for labour to be performed in any place beyond British India, or to enable any Native of India to emigrate, or to assist any Native of India in emigrating :

Contracts for labour out of India unlawful, except under this Act.

provided that nothing in this Act shall apply—

to any contract with any Native of India for labour to be performed in any Foreign Settlement on the mainland of India or in any Native State in India;

to emigration to any such Settlement or State;

to any contract for labour to be performed in, or to emigration to, the Island of Ceylon; or

to any contract with or the emigration of any Native seaman or other person who of his own free will contracts to navigate or serve on board of any vessel, or who embarks on board such vessel in pursuance of such contract, or any person who contracts to serve as a menial servant only, and who embarks as such menial servant.

**23.** Contracts may be made with Natives of India to emigrate—

Places for emigration to which contracts may be made with Natives.

to any of the British Colonies of Mauritius, Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, Natal, St. Kitts and Seychelles;

to any of the French Colonies of Réunion, Martinique, Guadeloupe and its dependencies, and Guiana,

and to the Danish Colony of St. Croix;

and it shall be lawful to enable or assist any Native of India to emigrate to any such Colony.

**24.** The Governor General in Council may, from time to time, by notification published in the *Gazette of India*, declare that the emigration of Natives of India shall be lawful to any place other than the places mentioned in section twenty-three : [a]

Power to legalize emigration to other places.

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[a] In exercise of this power the Governor General in Council has declared emigration of Natives lawful to the Netherlands colony of Dutch Guiana, *Gazette of India*, 9th November 1872, p. 1032, and to the Island of Nevis, *Gazette of India*, 19th April 1873, p. 378.

Proviso.

provided that every such notification contain also a declaration, that the Governor General in Council has been duly certified that the Government of the place to which the notification refers has made such laws and other provisions as the Governor General in Council thinks sufficient for the protection of Natives of India emigrating to such place.

Contracts may be made for emigration to such other places.

25. From the date of any such notification, contracts may be made with any Native of India for labour to be performed in any place to which emigration is authorized in the notification, and it shall be lawful to enable or assist any Native of India to emigrate to such place;

but all contracts and emigration under such notification shall be made and conducted subject to the provisions of this Act.

From what ports emigration lawful.

26. Emigration shall not be lawful except from the port of Calcutta, the port of Madras, or the port of Bombay.

## VI.—Registration of Emigrants.

Natives engaging to emigrate to appear before Magistrate.

27. Every Native of India, who in any place other than the Towns of Calcutta, Madras or Bombay, enters into any engagement with a Recruiter to emigrate, shall, before leaving the district within which the engagement was entered into, appear with the Recruiter before a Magistrate, and no Recruiter shall remove such emigrant from the said district until he has so appeared.

Examination and registration.

Upon so appearing, the Magistrate shall examine the intending emigrant with reference to his engagement; and if it appears that he understands the nature of the engagement he has entered into, and that he is willing to fulfil the same, the Magistrate shall register in a book to be kept for the purpose, in such form as the Local Government prescribes,

(*a*) the name, name of the father, and the age, of such emigrant,

(*b*) the name of the village or place of which such emigrant is a resident,

(*c*) the emigration depôt to which it is intended he shall proceed, and

(*d*) the rate of wages and period of service, if any, agreed upon between the emigrant and the Recruiter.

If the Magistrate thinks that the intending emigrant does not understand the nature of the engagement, or has been induced to enter into the engagement by fraud or misrepresentation, he shall refuse to register his name.

A copy of every registration under this section, written on substantial paper, which shall not require a stamp, shall be furnished by the Magistrate to the emigrant registered.

Copy of registration to be sent to

28. Authentic copies of every such registration shall be forthwith forwarded by the Magistrate to the Emigration Agent at the depôt to which the

person named therein has been engaged to proceed, and to the Protector of Emigrants at the intended port of embarkation.

Emigration Agent and Protector.

**29.** Every Native of India, who in the towns of Calcutta, Madras or Bombay enters into any engagement with a Recruiter to emigrate, shall, within forty-eight hours of making such engagement, appear with the Recruiter before the Protector of Emigrants in such town; and no Recruiter shall remove such emigrant from the said town, or to any emigration depôt, until he has so appeared.

Registration of emigrants recruited in presidency towns.

Upon his so appearing, the Protector of Emigrants shall examine the intending emigrant with reference to his engagement; and if it appears that he understands the nature of the engagement he has entered into, and that he is willing to fulfil the same, the Protector of Emigrants shall register in a book to be kept for the purpose, in such form as the Local Government prescribes,—

(*a*) the name, the name of the father, and the age, of such emigrant,

(*b*) the name of the village or place of which such emigrant is a resident,

(*c*) the Emigration depôt to which it is intended he shall proceed, and

(*d*) the rate of wages and period of service, if any, agreed upon between the emigrant and the Recruiter.

If the Protector of Emigrants thinks that the intending emigrant does not understand the nature of the engagement, or has been induced to enter into the engagement by fraud or misrepresentation, he shall refuse to register his name.

A copy of every registration under this section, written on substantial paper, which shall not require a stamp, shall be furnished by the Protector to the emigrant registered.

**30.** An authentic copy of every such registration shall be forthwith forwarded by the Protector to the Emigration Agent of the place for which the person named therein has been engaged.

Copy of registration by Protector to be forwarded to Agent.

**31.** For the registration of every emigrant under section twenty-seven or section twenty-nine, the Recruiter shall pay to the Magistrate or the Protector of Emigrants, as the case may be, a fee of one rupee and eight annas.

Fee for registration.

On proof of the desertion of any emigrant before embarkation, the fee paid in respect of such emigrant may be refunded by the Magistrate or the Protector to the Recruiter by whom it was paid, under such rules as are from time to time made in that behalf by the Governor General in Council.

## VII.—Conveyance of Emigrants to Depôts.

**32.** (1). Every emigrant recruited under the provisions of this Act shall be conveyed by land or river with all convenient despatch to the depôt, at the

Conveyance of emigrant to depôt.

port of embarkation, established by the Emigration Agent of the place to which such emigrant has contracted to emigrate.

Emigrants to be accompanied by Recruiter.

(2). The registered emigrants engaged by any Recruiter shall, while proceeding to a depôt, be accompanied throughout the journey either by the Recruiter himself or by a competent person appointed by him with the approval of the Magistrate by whom the emigrants have been registered. The Magistrate shall give to the person so appointed a certificate under his signature, stating that he has been appointed for the journey to the depôt.

Recruiter to provide suitable food and lodging.

(3). Every Recruiter by or through whom emigrants may be forwarded to a depôt shall, throughout their journey, provide them with suitable lodging and food.

## VIII.—Arrival at Depôts and Procedure thereon.

Arrival at depôt to be reported.

**33.** The arrival of each emigrant at a depôt shall immediately be reported by the person in charge of the depôt to the Emigration Agent, and by such Agent to the Protector of Emigrants.

Copy of registration to be shown to Medical Inspector.

Emigrants to be inspected by him.

**34.** The copy of the registration of every emigrant, received by the Emigration Agent from the Magistrate or from the Protector of Emigrants, shall, as soon as conveniently may be after the arrival of the emigrant, be shown to the Medical Inspector of Emigrants; and the emigrant shall be examined by the Medical Inspector to ascertain if he is in a fit state of health to emigrate to the place to which he has contracted to proceed.

The Medical Inspector, if satisfied of his fitness, shall give a certificate thereof to the Emigration Agent: if satisfied of his unfitness, he shall give a certificate thereof to the Protector of Emigrants.

When emigrant to be sent back to place of registration.

**35.** If the Medical Inspector certifies that any emigrant is not in a fit state of health to emigrate to the place to which he has contracted to proceed, or if any irregularity has occurred in the recruitment of any emigrant, the Protector of Emigrants may order the Emigration Agent in whose depôt such emigrant may be, forthwith to pay to him, the Protector of Emigrants, such reasonable sum as is necessary to enable the emigrant to return to the place where he was registered, and the Protector may take any steps he thinks necessary for the conveyance of the emigrant to such place.

Failure of Emigration Agent to pay sum required to enable emigrant to return.

**36.** On failure of the Emigration Agent for twenty-four hours to comply with an order of the Protector for the payment of any such sum, the Protector may pay the same to or on behalf of the emigrant.

Every sum so disbursed shall be recoverable by the Protector, with six per cent. interest from the date of disbursement, from the Emigration Agent on whose default it is paid, as money paid to the use of such Emigration Agent.

No further proof shall be required by any Court in any such case than that the Protector gave the Emigration Agent an order to pay such money, and that the Emigration Agent for a space of twenty-four hours made default in complying therewith:

Provided that every emigrant who, from his state of health, is, in the opinion of the Medical Inspector, unfit to undertake the journey back to the place where he was registered, shall, in addition to his being conveyed back at the expense of the Emigration Agent, be entitled to continue in the depôt and to be fed, clothed, lodged and attended to there, by and at the expense of the Emigration Agent, until such time as the Protector otherwise orders.

Duty of Emigration Agent.

**37.** The Emigration Agent, in the presence of the Protector of Emigrants and within forty-eight hours after the arrival of each emigrant at the depôt, shall ascertain by personal communication with such emigrant whether or not he has been properly fed and otherwise properly treated on his journey to the depôt.

The Emigration Agent shall also, in the presence of the Protector and within such time as aforesaid, examine the copy of the registration furnished to the emigrant under section twenty-seven or section twenty-nine. If for any reason further enquiry be necessary, such enquiry shall be made forthwith.

Unless the Emigration Agent, with the consent of the Protector, refuses to recognize or to be bound by the contract entered into by the Recruiter with the emigrant, as shown by the copy of the registration produced by the emigrant, such copy, if it be a copy furnished under section twenty-seven, shall be countersigned by both the Emigration Agent and the Protector, and if it be a copy furnished under section twenty-nine shall be countersigned by the Emigration Agent alone. The copy so countersigned, under whichever section it may have been furnished, shall be delivered back to the emigrant.

Refusal of Agent, without consent of Protector, to be bound by contract made by Recruiter.

If the Emigration Agent, without the consent of the Protector, refuses to be bound by the contract entered into by the Recruiter with the emigrant, the Protector may thereupon order the Emigration Agent forthwith to pay to him, the Protector of Emigrants, such reasonable sum as is necessary to enable the emigrant to return to the place where he was registered. On failure of the Emigration Agent to pay such sum within twenty-four hours of his being ordered so to do, the Protector may pay the same to or on behalf of the emigrant. All the provisions of section thirty-six as to sums paid by the Protector shall apply, so far as the circumstances of the case permit, to sums paid by him under this section.

Suits against Emigration Agent.

The Protector shall also, in every case in which it seems to him proper to do so, institute a suit on behalf of the emigrant against the Emigration Agent,

for the recovery of damages for the breach of contract committed by the Emigration Agent.

In every such suit, the contract entered into by the Recruiter shall be deemed to have been entered into by and to be binding on the Emigration Agent.

After examination and Medical Inspector's certificate, Emigration Agent to grant a pass.

**38.** After the examination mentioned in section thirty-seven, and if the Medical Inspector has given a certificate of the fitness of the emigrant to emigrate, the Emigration Agent shall deliver to the emigrant a pass, countersigned by the Protector of Emigrants as hereinafter provided, stating the name and the age of the emigrant and the name of his father, and certifying that he is in a fit state of health to emigrate to the place to which he has contracted to go.

Protector of Emigrants to attend personally at examination and passing.

**39.** The Protector of Emigrants shall attend personally at the examination and passing of emigrants by the Emigration Agent under sections thirty-seven and thirty-eight, and shall see that the Emigration Agent makes all such enquiries of the emigrants as it may be his duty to make.

And to countersign pass.

If such Protector is satisfied with such inquiries, but not otherwise, he shall countersign the pass delivered by the Emigration Agent.

## IX.—Emigrant Vessels.

Emigrant not to be received on board unlicensed vessel.

**40.** (1). It shall not be lawful to receive any emigrant on board any vessel unless a license to carry emigrants in such vessel has been obtained from the Local Government. The granting or withholding any such license shall be in the discretion of the Local Government.

Application for license.

(2). The Master or owner of any vessel who desires to obtain a license to carry emigrants in such vessel, shall apply in writing through the Protector of Emigrants to the Local Government for such license.

Contents of license.

(3). Every such application shall state the number of men, women and children proposed to be carried, and the tonnage and other particulars respecting the vessel.

Survey of vessel.

(4). The Protector of Emigrants shall cause the vessel to be carefully surveyed by a competent person, with a view to ascertain her sea-worthiness and the extent and nature of her accommodation for emigrants, and to ascertain that she is properly ventilated and is supplied with all the tackle requisite for her voyage.

Report after survey, and certificate to Master.

(5). The Protector of Emigrants shall make a a full report on the survey to the Local Government; and if he is of opinion that the vessel is in all respects suitable for the carrying of emigrants under this Act, but not otherwise, he shall give a certificate to that effect to the Master of the vessel.

Bond to be executed by Master.

(6). In consideration of his obtaining a license to carry emigrants, the Master of every vessel intended to carry emigrants shall, upon the requisition

of the Protector of Emigrants and before any emigrant embarks on board of such vessel, execute in duplicate a bond, in such form as the Local Government prescribes, binding himself and his owners in a penal sum of ten thousand rupees to conform to the several conditions in this Act provided. The Protector of Emigrants shall require the Master to execute such bond as aforesaid in duplicate, and shall forward one copy of it to the Government of the place to which the emigrants are to be carried (or in the case of a French colony to the British Consular Agent at such colony), and the other copy of it to the Local Government.

Space and accommodation required on board.

**41.** (1). No certificate under section forty shall be granted, unless there be provided for the emigrants, either between decks or in cabins on the upper deck firmly secured and entirely covered in, a space devoted to their exclusive use. Such cabins and space between decks shall in every part have a height of not less than five feet and a half.

(2). No compartment shall take more than one adult emigrant for every twelve superficial feet on deck, and for every cubic space of seventy-two feet, or more than one child who has completed two and has not completed ten years of age for every eight superficial feet on deck.

(3). A distinct and separate place shall be fitted up for a hospital in every emigrant vessel.

(4). Women and children shall occupy a compartment of the vessel distinct and separate from the compartments of the single men.

(5). An emigrant above the age of ten years shall, for the purposes of this Act, count as an adult, and two children from one to ten years of age shall count as one adult.

Provisions, fuel and water.

**42.** (1). There shall be actually laden and on board of every vessel carrying emigrants, at the time of the departure of such vessel from the port at which they embark,

(*a*) good and wholesome provisions for the use and consumption of the said emigrants (over and above the victualling of the Captain, officers and crew, and of the cabin and other passengers, if any) in such quantity and of such description and quality as may be prescribed by any rule framed by the Governor General in Council under section fifty-six,

(*b*) fuel for cooking such provisions, and

(*c*) a supply of water, to the amount of seven gallons for every week of the probable length of the voyage for every emigrant on board such vessel. Such water shall be carried in tanks to be approved by the Protector of Emigrants.

Surgeon, medicines and stores.

(2). Every such vessel shall, at the time of departure aforesaid, have actually on board and shall carry with her a properly qualified European or

Native Surgeon, and such medicines and other stores in such quantity and of such quality as may be prescribed by rules made under section fifty-six.

Supply of water for vessel calling at intermediate port.

(3). When any vessel is destined to call at a port or place in the course of her voyage for the purpose of filling up her tanks, a supply of water at the rate hereinbefore mentioned, for every week of the probable length of the voyage to such port or place, shall be deemed to be a compliance with this section.

The probable length of the voyage to such port or place shall be determined from time to time by the Protector of Emigrants, subject to the approval of the Local Government.

Supply in vessel fitted with distilling apparatus.

(4). When any such vessel is fitted with Normandy's apparatus, or other apparatus approved by the Protector of Emigrants, for distilling sea-water, and with proper and sufficient means for working the same, a reduction shall be allowed of one-third in the quantity of water required under this section.

Protector and Inspector of Emigrants to ensure compliance with above provisions.

(5). The Protector of Emigrants and the Medical Inspector of Emigrants shall see personally that all the provisions of this section are complied with.

Supply of extra clothing.

43. Before any vessel carrying emigrants clears out for any place westward of the Cape of Good Hope, between the first day of March and the fifteenth day of September, the Protector of Emigrants shall personally see that every emigrant is supplied with at least one extra double blanket, and that the same is placed with his other clothing or luggage.

Every emigrant shall be allowed to make use of such double blanket so long as the vessel is outside of the tropics.

Certificates from Protector of Emigrants and from Emigration Agent.

44. Before any vessel licensed to carry emigrants shall be cleared out from the port of Calcutta, Madras or Bombay, the Master of such Vessel shall obtain from the Protector of Emigrants at the port of clearance, and from the Emigration Agent for the place to which the emigrants are intended to proceed, certificates, under the hands of such Protector and Emigration Agent respectively, to the effect following, that is to say :—that such Protector and Emigration Agent have, in respect of the emigrants proceeding in such vessel, done all that is hereinbefore required to be done on the part of such Protector and Emigration Agent respectively; and that all the directions herein contained for ensuring the health, comfort and safety of the emigrants have been duly complied with, as well as all such rules as the Governor General in Council from time to time frames under section fifty-six.

## X.—Embarkation.

**45.** If any emigrant without sufficient cause refuses or neglects to embark when called upon by the Emigration Agent so to do, it shall not be lawful to compel such emigrant to embark or to put him on board-ship against his will, or to detain him against his will at the depôt or elsewhere: but nothing in this section shall diminish or affect the civil or criminal liabilities which such emigrant incurs by reason or in respect of his refusal or neglect aforesaid.

Emigrants refusing to embark.

Proviso.

Every case in which an emigrant is charged before a Magistrate of police in a presidency town with refusing or neglecting to embark without sufficient cause, shall be heard and determined by such Magistrate in a summary manner, and every such emigrant shall, on conviction, be punished in the manner provided in section four hundred and ninety-two of the Indian Penal Code for the punishment of offences under that section.

**46.** Emigrants may leave India for any place East of the Cape of Good Hope to which emigration is lawful under this Act at all times of the year.

Time of sailing for places East of Cape of Good Hope.

For any such place West of the Cape of Good Hope, emigrants may leave only between the thirty-first day of July and the first day of March, unless they embark in vessels using steam-power, in which case they may leave at any time of the year:

For other places.

Provided that, in cases of emergency, the Local Government may permit emigrants for any place West of the Cape of Good Hope to leave between the thirty-first day of July and the first day of April.

**47.** The Protector of Emigrants shall, from the report of the Medical Inspector and by personal communication with every emigrant before embarkation, ascertain that the emigrant is in good health and not incapacitated from labour by old age, bodily infirmity, or disease.

Emigrant unfit to undertake voyage.

If the Protector of Emigrants is of opinion that any emigrant is in a state of health which makes him unfit to undertake the voyage on which he is about to embark, the Protector shall refuse to permit his embarkation, and the husband, wife, father, mother, or child of such emigrant may, notwithstanding anything herein contained, refuse to embark.

The Protector of Emigrants shall also, before the embarkation of any emigrant, ascertain that he has in his possession the copy of the registration provided under section twenty-seven or section twenty-nine.

If it appear to the satisfaction of the Protector of Emigrants that any emigrant has lost such copy, the Protector may furnish such emigrant with

another copy of such registration, to be made from the copy received by the Protector from the Magistrate under section twenty-seven or from the register kept by himself under section twenty-nine, and shall thereupon allow such emigrant to embark.

Provisions of Act to be explained.

48. The Protector of Emigrants shall explain to all emigrants, prior to their embarkation, the substance of the provisions of this Act so far as they immediately affect such emigrants.

Procedure on embarkation.

49. (1). When any emigrants are about to embark on any vessel, the Emigration Agent for the place to which they are intended to proceed shall furnish the Master of the vessel with five copies of a list, specifying, as accurately as may be, the names, ages and occupations, and the names of the fathers, of the emigrants about to embark on board such vessel.

Emigrant to give his pass to Master.

(2). On embarkation, every emigrant shall deliver to the Master of the vessel the pass granted to him under section thirty-eight; and the Master shall not receive any emigrant on board unless he delivers up such pass. The Master shall compare the emigrants who embark and the passes delivered by them with the list furnished by the Emigration Agent, and if the list appear to be correct, and to correspond with the passes delivered and with the emigrants embarked, the Master shall sign the five copies of the list.

Protector to be personally present.

(3). The Protector of Emigrants shall be personally present at the embarkation of all emigrants, and shall see that the Master duly compares the list with the passes and emigrants, and he shall himself also compare the list with the passes and emigrants.

Examination by Medical Inspector.

(4). The Medical Inspector shall also be personally present at the embarkation of all emigrants and shall examine each emigrant to ascertain if he is in a fit state of health to emigrate to the place to which he has contracted to proceed; and the provisions of sections thirty-four, thirty-five and thirty-six shall apply, *mutatis mutandis*, to emigrants examined under this clause.

One copy of list of emigrants given to Protector, to be signed and returned to Master.

(5). When the copies of the list have been signed, the Master shall give two copies to the Protector of Emigrants, who shall sign such copies if he believes them to be correct, and shall return one copy to the Master of the vessel: the other copy shall be filed in the office of the Protector of Emigrants.

Emigrant without pass not to remain on board.

(6). The Protector of Emigrants shall not permit any emigrant to remain on board who has not a pass, or is not mentioned in the list aforesaid.

Pass to be returned to emigrant on arrival at place of destination.

(7). Every pass delivered up to the Master of a vessel under this section shall be returned by him to the emigrant by whom the same was delivered up, prior to such emigrant disembarking on the arrival of the vessel at her place of destination.

**50.** The Master of every vessel carrying emigrants shall, after the embarkation of the emigrants and before the departure of the vessel, give to the Emigration Agent at the port from which such vessel is cleared out two others of the five copies of the list of emigrants mentioned in section forty-nine, duly signed by the Master.

Copy of list of emigrants to be signed by Emigration Agent and returned to Master.

The Emigration Agent shall thereupon sign such copies, and shall return to the Master one of the said copies, which shall, on the arrival of the vessel at the place of destination and previous to the disembarkation of any emigrant, be delivered by the Master to the Protector of Emigrants, or other the proper officer, at such place.

And by him to be delivered at place of destination.

**51.** The Protector of Emigrants shall, by every vessel which carries emigrants, send to the Protector of Emigrants or other the proper Government Authority at the place for which the emigrants embark, a correct and detailed list of all emigrants embarked in such vessel, compiled from the passes of the emigrants and from the list signed by the Master as aforesaid.

Protector to send list of emigrants to Government of place to which they sail.

**52.** The Master of every vessel carrying emigrants from the port of Calcutta shall proceed on his voyage and depart with his vessel from Garden Reach within twenty-four hours after the embarkation of such of the emigrants as shall have first embarked.

Vessel sailing from Calcutta to depart within twenty-four hours of embarkation.

**53.** Every vessel sailing from the port of Calcutta with emigrants shall proceed from Garden Reach to sea under tow of a competent steamer.

Vessels sailing from Calcutta to be towed to sea.

**54.** Two copies of this Act and of all rules made by the Governor General in Council under section fifty-six, and two copies of a translation of this Act and of such rules, in such language or languages as the Local Government may direct, shall be delivered to the Master of every vessel carrying emigrants by the Emigration Agent at the time of clearance, and shall be kept on board of every such vessel during the whole voyage.

Copies of Act and rules to be kept on board.

One of such copies or translations shall, upon request made at any reasonable time to the Master of the vessel, be produced to any emigrant or passenger for his perusal.

**55.** In case of sickness breaking out on board of any vessel conveying emigrants to Seychelles, such emigrants may be taken to the quarantine-station of Mauritius.

Taking emigrants for Seychelles to quarantine-station of Mauritius.

In such case the emigrants may, at their option, contract for service at Mauritius, or may proceed to Seychelles.

If they elect to contract for service in Mauritius, such emigrants shall then be regarded and treated, in all respects, as if they had emigrated to Mauritius under the provisions of this Act.

## XI.—Supplementary Powers.

Power of the Governor General in Council to make rules.

**56.** The Governor General in Council may from time to time make rules consistent with this Act,—

(1). To regulate the proportion of women to be taken with emigrants, the proportion of children to be taken with adults, and the age below or above which children shall not be taken;

(2). To prescribe the description, quantity and quality of provisions to be taken by vessels carrying emigrants, the daily allowance of food and water to be issued to each emigrant during the voyage, and the nature and amount of clothing which shall be supplied to the emigrants;

(3). To provide for the medical care of emigrants during their residence at the depôts and on their voyages;

(4). To prescribe the nature, quality and quantity of medical drugs and other stores to be carried on board such vessels;

(5). To provide for the ventilation and cleanliness of such vessels during their voyages, and for their being furnished with a sufficient number of suitable boats for use in case of shipwreck or fire;

(6). To provide for a journal being kept, by the Surgeon of every such vessel, of the health of the emigrants, and of his treatment of the sick, together with full explanations of the causes of every death;

(7). And generally to provide for the security, well-being, and protection of emigrants.

All such rules shall be published in the *Gazette of India*[a] and shall have effect as if they were contained in this Act.

Provided that, in cases of emergency, the Local Government may permit any vessel carrying emigrants to leave port although the proportion of women or children embarked on board such vessel is not in accordance with the said rules.

Power to prohibit emigration to any place to which emigration is allowed.

**57.** Whenever the Governor General in Council has reason to believe that in any place to which emigration is lawful under this Act, proper measures have not been taken for the protection of emigrants immediately upon their arrival in such place or during their residence therein, or for their safe return to India, or to provide a return-passage to India for any such emigrants at or about the time at which they are entitled to such return-

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[a] Rules as to emigration from Calcutta, see *Gazette of India*, 22nd February 1873, p. 115; 1st November 1873, p. 926; 30th May 1874, p. 328; 17th July 1875, p. 372; 15th January 1876, p. 40:

From Madras: *Gazette of India*, 7th February 1874, p. 54; 14th November 1874, p. 541; 17th July 1875, p. 372; 15th January 1876, p. 40:

From Bombay: *Bombay Government Gazette*, 29th April 1875, p. 414; *Gazette of India*, 22nd May 1875, p. 238; 15th January 1876, p. 40.

passage, the Governor General in Council may, by notification published in the *Gazette of India*, declare that emigration to such place shall cease and be prohibited from a certain day to be specified in the notification.

Emigration to place mentioned to be suspended.

**58.** After any notification has been published under section fifty-seven, emigration to such place as is specified in such notification shall be suspended from the day specified in the notification: but such suspension shall not affect any act done, offence committed, or proceedings commenced before such suspension.

During suspension, laws against emigration to be in force as to place specified.

**59.** During the time of such suspension any provisions of this Act prohibiting emigration, or the aiding or abetting of emigration, or the making of any contract for labour to be performed by any Native of India out of the British territories in India, shall take effect so far as relates to the place specified in the notification, in the same manner and to the same extent as if emigration to such place had never been declared to be lawful.

Revocation of suspension.

**60.** Whenever the Governor General in Council is satisfied that, in the place specified in any notification under section fifty-seven, proper measures have been taken and will be adopted for the protection of emigrants immediately upon their arrival thereat and during their residence therein, and for their safe return to India, and for providing return-passages to India for such emigrants at or about the time at which they are entitled to such return-passages, the Governor General in Council may notify in the *Gazette of India* that emigration to such place shall again be allowed from a day to be specified in such notification.

Thereupon all the provisions of this Act authorizing emigration to such place shall, from the day so specified, be revived and have the same effect as if such emigration had not been suspended, except as to acts done, offences committed, and proceedings commenced during the time of such suspension.

Power to prohibit emigration.

**61.** Whenever the Governor General in Council or the Local Government has reason to believe that, in any place to which emigration is lawful, the plague or other infectious disease dangerous to human life has broken out,

or that proper measures have not been taken for the protection of emigrants immediately upon their arrival in such place or during their residence therein,

or for their safe return to India,

or to provide a return-passage to India for any such emigrants at or about the time at which they are entitled to such return-passage,

the Governor General in Council or the Local Government may, by notification published in the *Gazette of India* or the local Gazette (as the case may be) declare that emigration from British India or from the territories subject

to the Local Government (as the case may be) to such place shall cease and be prohibited from a certain day to be specified in the notification.

Any notification issued by the Governor General in Council under this section may be cancelled by notification in the *Gazette of India.*

Any notification issued by the Local Government under this section may be cancelled by order of the Governor General in Council or by the Local Government.

Power to increase fees.

62. The Governor General in Council may, from time to time, by notification in the *Gazette of India,* increase any fee payable under sections eleven, nineteen and thirty-one, and may also in like manner reduce to its present amount any fee so increased :

Provided that no fee shall be increased under this section by more than double such amount.

## XII.—Special Provisions as to French Colonies.

Nomination of Agents for presidency towns.

Proviso.

63. The French Government may nominate a person to be Emigration Agent under this Act for each of the Ports of Calcutta, Madras and Bombay: Provided that such person, before entering on the duties of his office under this Act, has been approved by Her Majesty.

Powers of Agents.

64. The Emigration Agents so nominated and approved as aforesaid shall be authorized, under the conditions prescribed in this Act, to recruit and engage Native labourers for all or any of the French Colonies aforesaid.

Operations of recruitment.

65. The said Emigration Agents shall act in conformity with the regulations now or hereafter existing for the recruitment of Native labourers for British Colonies, and shall, with regard to the operations of recruitment which are entrusted to them, enjoy for themselves and the persons whom they may employ in the management of the said operations, all the facilities and the advantages afforded to the Emigration Agents for British Colonies.

Protector of Emigrants.

66. The Protector of Emigrants at each of the three British ports aforesaid, shall act for the British Government as Protector of labourers emigrating under the provisions of this Part of this Act.

In French ports in India the duty imposed on the British Consular Agents by Article V of the Convention printed in the third schedule hereto annexed shall be performed under such instructions as may be given by the Governor General in Council in this behalf.

Contracts of service, with certain exceptions, to be made in India. Effect of contract.

67. All contracts of service made with labourers emigrating to French Colonies under this Act, except the contracts mentioned in clause four of Article IX and clause two of Article X of the said Convention, shall be made in India, and shall bind the emigrant either to serve a person designated by

name, or to serve a person to whom he is allotted by the proper authority on his arrival in the Colony to which he emigrates.

**68.** The contracts of service shall be in accordance with the terms of the said Convention, and shall make provision for— Matters to be provided for in contract.

(1). The duration of the engagement at the expiration of which the emigrant shall receive a return-passage to India at the expense of the French Government, and the terms on which he may abandon or renounce his right to a free return-passage.

(2). The number of days and hours of work.

(3). The wages and rations as well as the rate of payment for extra work, and all the advantages promised to the emigrant.

(4). Gratuitous medical treatment for the emigrant, except in cases where, in the opinion of the proper Government officer, his illness has arisen from his own misconduct.

(5). In every contract of engagement there shall be inserted an exact copy of Articles IX, X, XX and XXI of the said Convention.

**69.** The Governor General in Council may, by order to be published in the *Gazette of India,* extend this Act to any other French Colony not expressly named herein, at which a British Consular Agent is established and to which the application of the said Convention shall be extended, and in such order may declare the probable length of the voyage to such Colony. Power to extend Act to French Colonies not expressly named.

Such declaration shall have the same effect as if it formed part of this section.

**70.** Every emigrant vessel sailing to a French Colony shall carry an European Surgeon and an Interpreter. Vessel to carry European Surgeon and Interpreter.

## XIII.—Penalties.

**71.** Whoever, except under and in conformity with the provisions of this Act, makes any contract with any Native of India for labour to be performed in any place beyond British India to which emigration is not authorized under this Act, shall be deemed to have committed the offence specified in section three hundred and sixty-three of the Indian Penal Code; For making unlawful contract of labour.

and whoever knowingly enables or assists any Native of India to emigrate to any such place, or aids in or abets the emigration of any Native of India to any such place, shall be deemed to have abetted the commission of that offence.

**72.** Whoever, not being a Recruiter duly licensed under this Act, acts or is employed as a Recruiter of labourers, or, contrary to the provisions of this Act, enters into any contract with a Native of India for labour to be perform- For recruiting without being licensed.

ed by such Native in any place beyond British India, shall be liable to a fine not exceeding five hundred rupees.

For Recruiter failing to take engaged emigrants before Magistrate or Protector.

73. Whoever, being a duly licensed Recruiter, removes any emigrant whom he may engage in any district or place other than the towns of Calcutta, Madras or Bombay, from such district or place, without such emigrant having appeared along with the Recruiter before a Magistrate in order that the emigrant might be examined and registered;

and whoever removes any emigrant whom he may engage in any one of the towns of Calcutta, Madras or Bombay, from such town, or to an emigration depôt, without such emigrant having appeared with the Recruiter before the Protector of Emigrants in order that the emigrant might be examined and registered:

For fraudulently inducing labourer to contract.

and whoever by means of intoxication, violence, fraud, or false pretences induces any Native of India to enter into a contract for labour to be performed by him in any place to which emigration is lawful under this Act, or to proceed to any such place without having entered into any contract;

For not supplying proper food.

and whoever fails to supply any emigrant whom he has engaged, and who is registered, with suitable food, or otherwise ill-treats such emigrant on his journey to the depôt;

For not taking emigrant to depôt.

and whoever forwards, sends or conveys any such emigrant otherwise than is provided in section thirty-two, or to any house or place in or near the towns of Calcutta, Madras or Bombay, respectively, other than the depôt for the emigrants for the place at which such emigrant has contracted to labour,

shall be liable to a fine not exceeding five hundred rupees.

For forwarding emigrants or allowing them to go without being duly registered.

74. Whoever, being a duly licensed Recruiter, forwards or sends any emigrant from the district or town in which he has entered into an engagement, to any emigration depôt, without such emigrant having been duly registered in accordance with the provisions of sections twenty-seven and twenty-nine;

and whoever, being a duly licensed Recruiter, induces or knowingly permits any such emigrant to leave such district or town, or to proceed to any emigration depôt, for the purpose of emigrating to any place, without the emigrant being duly registered as aforesaid,

shall be liable to a fine not exceeding five hundred rupees.

For false representation of Government authority.

75. Whoever, without lawful authority, issues any written order to the Police to assist himself or any other person to procure labourers to proceed to any place beyond British India, or falsely represents that such labourers are required by the Government or are to be engaged on behalf of Government, shall be liable to a fine not exceeding five hundred rupees.

**76.** The Master of any vessel which has not been licensed as provided in section forty, knowingly receiving any emigrant on board in order to convey such emigrant to any place contrary to the provisions of this Act, shall be liable to imprisonment for a period not exceeding one year, and also to a fine not exceeding one thousand rupees for every such emigrant received on board, and the vessel shall be liable to be forfeited.

For receiving emigrants in unlicensed vessel.

**77.** If the Master of any vessel, at the port of Calcutta, the port of Madras, or the port of Bombay, clears such vessel for any place to which emigration is lawful under this Act, and takes on board any emigrant without having fully complied with every particular required in sections forty-one and forty-two, he shall be liable to a fine not exceeding two hundred rupees for every emigrant so taken on board.

For clearing ship without complying with rules.

**78.** If the Master of any vessel, after having cleared such vessel for any place to which emigration is lawful under this Act, takes on board any emigrant without such emigrant having been duly entered in the lists mentioned in sections forty-nine and fifty, and in the manner in those sections prescribed, he shall be liable to a fine not exceeding two hundred rupees for every emigrant so taken on board.

For taking on board after clearance emigrants not entered in list.

**79.** If after having obtained a certificate in accordance with the provisions of section forty, the Master of any vessel cleared for any place to which emigration is lawful under this Act, fraudulently does, or suffers to be done, any act or thing whereby such certificate becomes inapplicable to the altered state of the vessel or other matter to which such certificate relates, he shall be liable to a fine not exceeding five thousand rupees,

and he may also be sued on any bond which he may have executed in consideration of any license obtained for the vessel as originally described.

For fraudulent acts whereby certificate becomes inapplicable to vessel.

**80.** If the Master of a vessel sailing from the port of Calcutta, licensed under section forty and sailing with emigrants on board, without reasonable excuse causes or allows his vessel to proceed from Garden Reach to sea, or to proceed any part of the distance between Garden Reach and sea, without his vessel being under tow of a competent steamer,

or if such vessel has not left Garden Reach and proceeded on her voyage within the time prescribed in section fifty-two,

the Master of such vessel shall be liable to a fine not exceeding one thousand rupees.

For proceeding to sea without steam.

**81.** All the powers vested by law in the officers of Customs in regard to the searching and detention of vessels, or otherwise, for the prevention of smuggling on board thereof, may be exercised by such officers for the prevention of the illegal embarkation of emigrants on board vessels bound for any

Customs officers may search and detain for purposes of this Act.

place to which emigration is lawful under this Act, and of other offences against this Act.

Prosecutions under this Act where and how instituted.

82. All prosecutions under this Act shall be instituted on information laid at the instance of an Emigration Agent, or of a Protector of Emigrants, or of an officer appointed for the purpose by the Local Government, before a Magistrate of police, or before a Magistrate, according as they shall be instituted for offences committed within or for offences committed beyond the limits of the towns of Calcutta, Madras and Bombay.

Mode of recovering fines.

All fines imposed under this Act may be recovered, if for offences committed outside the limits of the said towns, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act regulating the Police of such towns in force for the time being.

## XIV.—Miscellaneous.

Probable length of voyages to places mentioned in section twenty-three.

83. The probable length of the voyages to the places mentioned in section twenty-three, from Calcutta, Madras or Bombay, respectively, shall, for the purposes of this Act, and in the case of sailing vessels, be deemed to be as follows:—

From Calcutta:—

| | |
|---|---|
| To Mauritius, Seychelles and Réunion | Between the months of April and October inclusive, ten weeks; and between the months of November and March inclusive, eight weeks. |
| To Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, St. Kitts, St. Croix, Martinique, Guadeloupe and its dependencies ... | Twenty weeks. |
| To French Guiana ... ... | Twenty-six weeks. |
| To Natal ... ... ... | Twelve weeks. |

From Madras:—

| | |
|---|---|
| To Mauritius, Seychelles and Réunion | Between the months of April and October inclusive, seven weeks; and between the months of November and March inclusive, six weeks. |

| | |
|---|---|
| To Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, St. Kitts, St. Croix, Martinique, Guadeloupe and its dependencies, and French Guiana ... ... | Nineteen weeks. |
| To Natal ... ... ... | Ten weeks. |

FROM BOMBAY :—

| | |
|---|---|
| To Mauritius, Seychelles and Réunion .. | Between the months of April and September inclusive, five weeks; and between the months of October and March inclusive, six weeks. |
| To Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, St. Kitts, St. Croix, Martinique, Guadeloupe and its dependencies, and French Guiana ... ... | Nineteen weeks. |
| To Natal ... ... ... | Ten weeks. |

In the case of vessels propelled either wholly or in part by steam, the Local Government may, by notification in the official Gazette, fix, for the purposes of this Act, the probable length of the voyages aforesaid.

Notification legalizing emigration to new place to give probable length of voyages thither.

**84.** Every notification under section twenty-four shall state the probable length of the voyages from Calcutta, Madras and Bombay, respectively, to every place to which emigration is thereby authorized, and thereupon such period shall, for the purposes of this Act, be taken to be the probable length of such voyage.

Exercise of powers of Magistrate of the District under this Act.

**85.** The Local Government may from time to time authorize any person invested with the powers of a Magistrate, as defined in the Code of Criminal Procedure, to perform the duties and exercise the powers by this Act assigned to and conferred on the Magistrate of the District.

Every person so authorized shall, in all respects for the purposes of this Act, be deemed to be included in the words "the Magistrate."

Act and rules made under it not to apply to certain vessels.

**86.** Nothing in this Act or in any rule to be made by the Governor General in Council under section sixty-one shall apply to any vessel in the service of the Lords Commissioners of the Admiralty, or to any of Her Majesty's vessels.

## THE FIRST SCHEDULE.

(*See section* 2).

| Number and year. | Title. |
|---|---|
| XLVI of 1860 ... | To authorize and regulate the Emigration of Native labourers to the French Colonies. |
| VII of 1862 ... | To amend Act XLVI of 1860 (to authorise and regulate the Emigration of Native labourers to the French Colonies). |
| XIII of 1864 ... | To consolidate and amend the laws relating to the Emigration of Native labourers. |
| VI of 1869 ... | To amend the law relating to the Emigration of Native labourers. |
| VI of 1870 ... | To enable the Governor General in Council to increase the fee payable under section thirty-one of the Emigration Act. |

## THE SECOND SCHEDULE.

(*See section* 19).

Office of the Protector of Emigrants at the Port of

*A B* is hereby licensed under the Indian Emigration Act, 1871, to be a Recruiter for engaging persons to proceed to for the purpose of labouring for hire.

This license will be in force for one year only from this date.

Dated the day of

(*Signed*) *C. D.*,
Protector of Emigrants.

## THE THIRD SCHEDULE.

(*See sections* 66, 67 *and* 68).

Convention between Her Majesty and the Emperor of the French relative to the Emigration of labourers from India to the French Colonies, with an additional Article thereto annexed.

*Signed at Paris,* July 1861.

[*Ratifications exchanged at Paris, July* 30*th,* 1861.]

His Majesty the Emperor of the French having made known, by a declaration dated this day (1st July 1861), his resolution to put an end to the

recruitment upon the coast of Africa of negro labourers by means of redemption; and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland desiring, in consequence, to facilitate the immigration of free labourers into the French Colonies, their said Majesties have resolved to conclude a Convention destined to regulate the recruitment of such labourers in the British territories in India. For this purpose they have named as their Plenipotentiaries :—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Most Honourable Henry Richard Charles, Earl Cowley, Her Majesty's Ambassador Extraordinary and Plenipotentiary to the Emperor of the French ;

And His Majesty the Emperor of the French, M. Edouard Antoine Thouvenel, Senator, His Minister and Secretary of State for the Department of Foreign Affairs;

Who, after having communicated to each other their respective full powers, found in due form, have agreed upon the following Articles :—

ARTICLE I.

The French Government shall be at liberty to recruit and engage labourers for the French Colonies in the Indian Territories belonging to Great Britain, and embark emigrants, being subjects of Her Britannic Majesty, either in British or French Ports in India, under the conditions hereinafter stipulated.

ARTICLE II.

The French Government shall entrust the direction of its operations in every centre of recruitment to an Agent chosen by itself.

Those Agents must be approved by the British Government.

Such approval is assimilated, with regard to the right of granting and withdrawal, to the Exequatur given to Consular Agents.

ARTICLE III.

This recruitment shall be effected conformably to the regulations which now exist, or may hereafter be established, for the recruitment of labourers for British Colonies.

ARTICLE IV.

The French Agent shall, with regard to the operations of recruitment which are intrusted to him, enjoy for himself and for the persons whom he may employ, all the facilities and advantages afforded to the Recruiting Agents for British Colonies.

ARTICLE V.

The Government of Her Britannic Majesty shall appoint in those British Ports where emigrants may be embarked, an Agent who shall be specially charged with the care of their interests.

In French Ports, the same duty with regard to Indian subjects of Her Britannic Majesty shall be confided to the British Consular Agent.

Under the term "Consular Agents" are comprised Consuls, Vice-Consuls, and all other Commissioned Consular Officers.

ARTICLE VI.

No emigrant shall be embarked unless the Agent described in the preceding Article shall have been enabled to satisfy himself, either that the emigrant is not a British subject or, if a British subject, that his engagement is voluntary, that he has a perfect knowledge of the nature of his contract, of the place of his destination, of the probable length of his voyage, and of the different advantages connected with his engagement.

ARTICLE VII.

The contracts of service, with the exception provided for by section 4 of Article IX, and by section 2 of Article X, shall be made in India, and shall either bind the emigrant to serve a person designated by name, or to serve a person to whom he shall be allotted by the proper authority on his arrival in the Colony.

ARTICLE VIII.

The contracts shall, moreover, make stipulation for—

1. The duration of the engagement, at the expiration of which the emigrant shall receive a return-passage to India at the expense of the French Government, and the terms on which it will be competent to him to abandon or renounce his right to a free return-passage.

2. The number of days and hours of work.

3. The wages and rations, as well as the rate of payment for extra work, and all the advantages promised to the emigrant.

4. Gratuitous medical treatment for the emigrant, except in cases where, in the opinion of the proper Government officer, his illness shall have arisen from his own misconduct.

In every contract of engagement, there shall be inserted an exact copy of Articles IX, X, XX and XXI of the present Convention.

ARTICLE IX.

1. The duration of the immigrant's engagement shall not be more than five years. In case, however, he shall be duly proved to have absented himself

from work, he shall be bound to serve a number of days equal to the time of his absence.

2. At the expiration of that period, every Indian who shall have attained the age of ten years at the time of his departure from India, shall be entitled to a return-passage at the expense of the French Government.

3. If he can show that his conduct has been regular, and that he has the means of subsistence, he may be allowed to reside in the Colony without any engagement; but from that time he will lose his right to a free return-passage.

4. If he consents to contract a new engagement, he will be entitled to a bounty, and will retain his right to a return-passage at the expiration of this second engagement.

The right of the immigrant to a return-passage extends to his wife, and to his children who quitted India under the age of ten years, as well as to those born in the Colonies.

ARTICLE X.

The immigrant shall not be bound to work more than six days in seven nor more than nine hours and a half a day.

The conditions of task-work and every other kind of regulation for work, shall be freely arranged with the labourer. The obligation to provide, on holidays, for the care of animals and the necessities of daily life, shall not be considered as work.

ARTICLE XI.

In British Ports, the arrangements which precede the departure of the emigrants shall be conformable to those prescribed by the regulations for the British Colonies.

In French Ports, the Emigration Agent or his deputies shall, on the departure of every emigrant ship, deliver to the British Consular Agent a nominal list of the emigrants who are subjects of Her Britannic Majesty, with a description of their persons, and shall also communicate to him the contracts of which he may require copies.

In such case, only one copy shall be given of all contracts of which the provisions are identical.

ARTICLE XII.

In the ports of embarkation, the emigrants who are subjects of Her Britannic Majesty shall be at liberty, conforming to the regulations of Police relative to such establishments, to leave the depôts, or other place in which they may be lodged, in order to communicate with the British Agents, who, on their part, may at any reasonable hour visit the places in which the emigrants, subjects of Her Britannic Majesty, are collected or lodged.

ARTICLE XIII.

Emigrants may leave India for the Colonies to the East of the Cape of Good Hope at all times of the year.

For other Colonies they may leave only from the first of August to the fifteenth of March. This arrangement applies only to sailing vessels; vessels using steam-power may leave at any time of the year.

Every emigrant sailing from India for the Antilles, between the first of March and the fifteenth of September, shall receive at least one double blanket over and above the clothing usually allowed to him, and may make use of it so long as the vessel is outside of the Tropics.

ARTICLE XIV.

Every emigrant vessel must carry an European Surgeon and an Interpreter.

The Captains of emigrant vessels shall be bound to take charge of any despatch which may be delivered to them by the British Agent at the port of embarkation for the British Consular Agent at the port of destination, and to deliver it to the Colonial Government immediately after his arrival.

ARTICLE XV.

In every vessel employed for the conveyance of emigrants, subjects of Her Britannic Majesty, the emigrants shall occupy, either between decks, or in cabins on the upper deck firmly secured and entirely covered in, a space devoted to their exclusive use. Such cabins and space between decks shall in every part have a height of not less than five feet and a half.

No compartment shall take more than one adult emigrant for every cubic space of seventy-two feet in the Presidency of Bengal and at Chandernagore, and for every cubic space of sixty feet in other French Ports, and in the Presidencies of Bombay and Madras.

An emigrant above the age of ten years shall count as an adult, and two children from one to ten years of age shall count as one adult.

A place shall be fitted up for a hospital in every emigrant ship.

Women and children shall occupy compartments of the vessel distinct and separate from those of the men.

ARTICLE XVI.

Each shipment of emigrants shall include a proportion of women equal to at least one-fourth of the number of men. After the expiration of three years, the numerical proportion of women shall be raised to one-third; after

two years more, it shall be raised to one-half; and after a further period of two years, the proportion shall be the same as may be fixed for the British Colonies.

ARTICLE XVII.

The British Agents at the embarkation shall have, at all reasonable times, the right of access to every part of the ship which is appropriated to the use of emigrants.

ARTICLE XVIII.

The Governors of the French establishments in India shall make such administrative regulations as may be necessary to ensure the complete execution of the preceding stipulations.

ARTICLE XIX.

On the arrival of an emigrant ship in any French Colony, the Government shall cause to be transmitted to the British Consular Agent any despatches which it may have received for him, together with—

1. A nominal list of all labourers disembarked who are subjects of Her Britannic Majesty.

2. A list of the deaths or births which may have taken place during the voyage.

The Colonial Government shall take the necessary measures to enable the British Consular Agent to communicate with the emigrants before their distribution in the Colony.

A copy of the "List of Distribution" shall be delivered to the Consular Agent.

He shall be informed of all deaths and births which may occur during the period of engagement, as well as of all changes of employer, and of all departures on a return-passage.

Every fresh engagement, or act of renunciation of the right to a free return-passage, shall be communicated to the Consular Agent.

ARTICLE XX.

All immigrants, being subjects of Her Britannic Majesty, shall, in the same manner as other subjects of the British Crown, and conformably to the ordinary rules of international law, enjoy, in the French Colonies, the right of claiming the assistance of the British Consular Agents; and no obstacle shall be opposed to the labourer's resorting to the Consular Agent and communicating with him; without prejudice, however, to the obligations arising out of his engagement.

ARTICLE XXI.

In the distribution of labourers no husband shall be separated from his wife, nor any father or mother from their children under fifteen years of age. No labourer shall be required to change his employer without his own consent, unless he be transferred to the Government, or to the person who has acquired the property on which he is employed.

Immigrants who may become permanently incapable of work, either by sickness or by any other cause beyond their own control, shall be sent back at the expense of the French Government, whatever time may still be wanting to entitle them to a free return-passage.

ARTICLE XXII.

All operations of immigration may be carried on in the French Colonies by French or British vessels without distinction.

British vessels which may engage in those operations shall be bound to conform to all the measures of Police, health, and equipment which may apply to French vessels.

ARTICLE XXIII.

The labour regulations of Martinique shall serve as the basis for all the regulations of the French Colonies into which Indian emigrants, subjects of Her Britannic Majesty, may be introduced.

The French Government engages not to introduce into those regulations any modification, the result of which would be to place the said Indian subjects in an exceptional position, or to impose upon them conditions of labour more stringent than those prescribed by the said regulations.

ARTICLE XXIV.

The present Convention applies to emigration to the Colonies of Réunion, Martinique, Guadeloupe and its dependencies, and Guiana.

It may hereafter be applied to immigration to other Colonies in which British Consular Agents shall be established.

ARTICLE XXV.

The provisions of the present Convention relative to the Indian subjects of Her Britannic Majesty shall apply to the Natives of every Indian State which is under the protection or political control of Her said Majesty, or of which the Government shall have acknowledged the supremacy of the British Crown.

ARTICLE XXVI.

The present Convention shall begin to take effect on the first of September 1861, and shall continue in full force for three years and a half. It shall remain in full force, if notice for its termination be not given in the course of the month of September of the third year, and then notice can be given only in the course of the month of September of each succeeding year.

In case of notice being given for its termination, it shall cease eighteen months afterwards.

Nevertheless the Governor General of British India in Council shall, in conformity with the Act of the 19th of September 1856, relative to immigration to British Colonies, have the power to suspend at any time emigration to any one or more of the French Colonies, in the event of his having reason to believe that in any such Colony proper measures have not been taken for the protection of the emigrants immediately upon their arrival or during their residence therein, or for their safe return to India, or to provide a return-passage to India for any such emigrants at or about the time at which they are entitled to such return-passage.

In case, however, the power thus reserved to the Governor General of British India should at any time be exercised, the French Government shall have the right immediately to terminate the whole Convention, if they should think proper to do so.

But in the event of the determination of the present Convention, from whatever cause, the stipulations relative to Indian subjects of Her Britannic Majesty introduced into the French Colonies shall be maintained in force in favour of the said Indian subjects, until they shall either have been sent back to their own country, or have renounced their right to a return-passage to India.

ARTICLE XXVII.

The present Convention shall be ratified, and the ratifications shall be exchanged at Paris in four weeks, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Paris, the first day of July, in the year of Our Lord one thousand eight hundred and sixty-one.

(L. S.) COWLEY.

(L. S.) THOUVENEL.

ADDITIONAL ARTICLE.

His Majesty the Emperor of the French having stated that, in consequence of the order which he gave long ago that no more African emigrants should be introduced into the Island of Réunion, that Colony has, since last year, had to obtain labourers from India and China; and Her Britannic Majesty having, by a Convention signed on the 25th of July 1860, between Her Majesty and His Majesty the Emperor of the French, authorized the Colony of Réunion to recruit six thousand labourers in Her Indian possessions, it is agreed that the Convention of this date shall take effect forthwith, with regard to the said Colony of Réunion.

The present Additional Article shall have the same force and validity as if it were inserted, word for word, in the Convention signed this day. It shall be ratified, and the ratifications shall be exchanged at the same time as those of the Convention.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Paris, the 1st of July 1861.

(L. S.) COWLEY.
(L. S.) THOUVENEL.

# THE INDIAN REGISTRATION ACT, 1871.

## ARRANGEMENT OF SECTIONS.

### PART I.—PRELIMINARY.

PREAMBLE.

SECTIONS.

1. Short title.
   Local extent.
   Commencement.
2. Repeal of enactments.
3. Interpretation-clause.

### PART II.—OF THE REGISTRATION ESTABLISHMENT.

4. Inspector General of Registration.
   Branch Inspector General of Sindh.
5. Districts and sub-districts.
6. Registrars and Sub-Registrars.

SECTIONS.

7. Offices of Registrars and Sub-Registrars.
8. Inspectors of registration offices.
9. Military cantonments may be declared sub-districts or districts.
10. Absence of Registrar from his district or vacancy in his office.
11. Absence of Registrar on duty in his district.
12. Absence of Sub-Registrar or vacancy in his office.
13. Appointments under sections 10, 11, or 12 to be reported to Government.
Suspension, removal and dismissal of Registering Officers.
14. Remuneration and establishments of Registering Officers.
15. Seals of Registering Officers.
16. Register Books.
Forms.
Fire-proof boxes.

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PART III.—OF REGISTRABLE DOCUMENTS.

17. Documents of which registration is compulsory.
Exception of composition-deeds.
And of transfers of shares and debentures in Land Companies.
Authorities to adopt.
18. Documents of which registration is optional.
19. Documents in language not understood by Registering Officer.
20. Documents containing interlineations, blanks, erasures or alterations.
21. Description of parcels.
Documents containing maps or plans.
22. Failure to comply with rules as to description of houses and land.

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PART IV.—OF THE TIME OF PRESENTATION.

23. Time for presenting documents of which registration is compulsory.
24. Provision where delay in presentation is unavoidable.
25. Documents executed out of British India.
26. Provision where office is closed on last day of period for presentation.
27. Wills may be presented or deposited at any time.

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PART V.—OF THE PLACE OF REGISTRATION.

28. Place for registering documents relating to land.
29. Place for registering other documents.
30. Registration by Registrar.
Registration by Registrar at Presidency town.
31. Registration or acceptance for deposit at private residence.

PART VI.—OF PRESENTING DOCUMENTS FOR REGISTRATION.

SECTIONS.

32. Persons to present documents for registration.
33. Powers of attorney recognizable for purposes of section thirty-two.
Proviso as to persons infirm, or in jail, or exempt from appearing in Court.
34. Enquiry before registration by Registering Officer.
35. Procedure on admission of execution.
Procedure on denial of execution, &c.

PART VII.—OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES.

36. Procedure where appearance of executant or witness is desired.
37. Officer or Court to issue and cause service of summons.
38. Persons exempt from appearance at registration office.
39. Law as to summonses, commissions and witnesses.

PART VIII.—OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

40. Persons entitled to present wills and authorities to adopt.
41. Registration of wills and authorities to adopt.

PART IX.—OF THE DEPOSIT OF WILLS.

42. Deposit of wills.
43. Procedure on deposit of wills.
44. Withdrawal of sealed cover deposited under section 42.
45. Proceedings on death of depositor.
Re-deposit.
46. Saving of Act X of 1865, section 259.

PART X.—OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

47. Time from which registered document operates.
48. Registered documents relating to property when to take effect against oral agreements.
49. Effects of non-registration of documents required to be registered.
50. Registered documents relating to land, of which registration is optional, to take effect against unregistered documents.

PART XI.—OF THE DUTIES AND POWERS OF REGISTERING OFFICERS.

(*A.*) *As to the Register Books and Indexes.*

51. Register books to be kept in the several offices.
52. Endorsements on document presented.
Receipt for document.
Documents admitted to registration to be copied.

SECTIONS.

53. Entries to be numbered consecutively.
54. Current indexes and entries therein.
55. Indexes to be made by Registering Officers.
Extra particulars in indexes.
56. Copy of entries in indexes Nos. I and II to be sent by Sub-Registrar to Registrar.
Such copy to be filed by Registrar.
57. Registering Officers to allow inspection of certain books and indexes, and to give certified copies of entries.

(*B.*) *As to the Procedure on admitting to Registration.*

58. Particulars to be endorsed on documents admitted to registration.
59. Such endorsements to be dated and signed by Registering Officer.
60. Certificate showing that document has been registered, and number and page of book in which it has been copied.
61. Endorsements and certificate to be copied.
Document to be returned.
62. Procedure on presenting document in language unknown to Registering Officer.
63. Power to administer oaths.
Record of substance of statements.

(*C.*) *Special Duties of Sub-Registrar.*

64. Procedure on registration of document relating to land situate in several sub-districts.
65. Procedure where document relates to land situate in several districts.

(*D.*) *Special Duties of Registrar.*

66. Procedure on registering documents relating to land.
67. Procedure on registration under section 30, clause (*b.*)

(*E.*) *Of the Controlling Powers of Registrars and Inspectors General.*

68. Registrar to superintend and control Sub-Registrars.
69. Inspector General to superintend registration offices.
His power to frame rules.
70. His power to remit fines.

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PART XII.—OF REFUSAL TO REGISTER.

71. Reasons for refusal to register to be recorded.
72. Registrar may alter or revise orders of Sub-Registrar refusing registration.
73. Procedure where Registrar refuses to register or direct registration.
74. Petition.
To be verified.

SECTIONS.

75. Court to fix day for hearing petition and copy thereof to be served.
76. Court may order document to be registered.
Provision for case in which Judge is Registering Officer.

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PART XIII.—OF THE FEES FOR REGISTRATION, SEARCHES AND COPIES.

77. Fees to be fixed by Local Government.
Alteration of fees.
Publication of fees.
78. Fees payable on presentation.

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PART XIV.—OF PENALTIES.

79. Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure.
80. Penalty for certain other offences.
Making false statements before Registering Officer.
Delivering false copy or translation.
False personation.
Abetment of offences under this Act.
81. Registering Officer may institute prosecutions.
82. Registering Officers to be deemed public servants.

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PART XV.—MISCELLANEOUS.

83. Destruction of unclaimed documents.
84. Registering Officer not liable for thing *bonâ fide* done in official capacity.
85. Nothing so done invalidated by defect in appointment or procedure.
86. Registration of documents executed by Government Officers or certain public functionaries.
87. Exemption of certain documents executed by or in favour of Government.
88. Inspection and copies of such documents.
89. Recognition, in Oudh and Burma, for three months of powers of attorney not executed according to section 33.
90. Burmese registration rules confirmed.

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FIRST SCHEDULE. Enactments repealed.

SECOND SCHEDULE. Forms of petition under section 73.
Form of verification.

# ACT No. VIII OF 1871.

*Received the Governor General's assent on the 24th March* 1871.

## An Act for the Registration of Documents.

WHEREAS it is expedient to consolidate and amend the laws relating to the registration of documents; It is hereby enacted as follows:— Preamble.

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### PART I.—PRELIMINARY.

1. This Act may be called "The Indian Registration Act, 1871:" Short title.

It extends to the whole of British India,[a] except such districts or tracts of country as the Local Government may from time to time, with the previous sanction of the Governor General in Council, exclude from its operation; Local extent.

And it shall come into force on the first day of July 1871. Commencement.

2. On and from that day the enactments mentioned or referred to in the first schedule hereto annexed shall be repealed to the extent specified in the third column of the same schedule. Repeal of enactments.

But all appointments, notifications, rules and orders made, and all offices established, under any of the said enactments shall be deemed to have been, respectively, made and established under this Act, except in so far as such rules and orders may be inconsistent herewith.

References made in Acts passed before the first day of July 1871, to any enactment hereby repealed, shall be read as if made to the corresponding section of this Act.

And nothing herein contained affects Act No. XX of 1866, so far as relates to the procedure upon any agreement recorded under section fifty-two of that Act at any time before that day, or the procedure provided by that Act for the registration and deposit of authorities to adopt executed before the first day of January 1872.

And so far as regards suits instituted before the first day of April 1873, nothing herein contained affects Act No. XIV of 1859, section one, clause ten, as amended by Act No. XX of 1866, section twenty-seven.

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[a] It has also been applied to the Haidarábád Assigned Districts, Foreign Department Notification No. 118J, dated 23rd June 1871, *Gazette of India*, 24th June 1871, p. 462, and to Mysore, Foreign Department Notification No. 146, dated 20th July 1871, *Gazette of India*, 22nd July 1871, p. 544.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context—

"Lease."

"Lease" includes a counterpart, a kabúliyát, an undertaking to cultivate or occupy, and an agreement to lease:

"Signature." "Signed."

"Signature" and "signed" include and apply to the affixing of a mark:

"Immoveable property."

"Immoveable property" includes land, buildings, rights to ways, lights, ferries, fisheries, or any other benefit to arise out of land, and things attached to the earth or permanently fastened to any thing which is attached to the earth, but not standing timber, growing crops, nor grass:

Moveable property."

"Moveable property" includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immoveable property:

"Book."

"Book" includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book:

"Endorsement." "Endorsed."

"Endorsement" and "endorsed" include and apply to an entry in writing by a Registering Officer on a rider or covering slip to any document tendered for registration under this Act:

"Minor."

"Minor" means a person who, according to the personal law to which he is subject, has not attained majority:[a]

"Representative."

"Representative" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot:

"Addition."

"Addition" means the place of residence, and the profession, trade, rank and title (if any) of a person described, and, in the case of a Native, his caste (if any) and his father's name, or where he is usually described as the son of his mother, then his mother's name:

"District Court."

"District Court" includes the High Court in its ordinary original civil jurisdiction; and

"District." "Sub-District."

"District" and "Sub-District" respectively mean a district and sub-district formed under this Act.

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## PART II.—Of the Registration Establishment.

Inspector General.

4. The Local Government shall appoint an officer to be the Inspector General of Registration for the territories subject to such Government,

or may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector

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[a] See Act No. IX of 1875.

General shall be exercised and performed by such officer or officers, and within such local limits, as the Local Government from time to time appoints in this behalf.

Branch Inspector General of Sindh.

The Governor of Bombay in Council may also, with the previous consent of the Governor General in Council, appoint an officer to be Branch Inspector General of Sindh, who shall have all the powers of an Inspector General under this Act other than the power to frame rules hereinafter conferred.

Any Inspector General or the Branch Inspector General of Sindh may hold simultaneously any other office under Government.

Districts and sub-districts.

5. For the purposes of this Act, the Local Government shall form districts and sub-districts, and shall prescribe, and may from time to time alter, the limits of such districts and sub-districts.

The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the local official Gazette.

Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

Registrars and Sub-Registrars.

6. The Local Government may appoint such persons, whether public officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrars of the several sub-districts, formed as aforesaid, respectively.

Offices of Registrar and Sub-Registrar.

7. The Local Government shall establish in every district an office to be styled the office of the Registrar, and in every sub-district an office to be styled the office of the Sub-Registrar,

and may amalgamate with any office of a Registrar any office of a Sub-Registrar.

Inspectors of registration offices.

8. The Local Government may also appoint officers to be called Inspectors of registration offices, and may from time to time prescribe the duties of such officers. Every such Inspector shall be subordinate to the Inspector General.

Military cantonments may be declared sub-districts or districts.

9. Every military cantonment where there is a Cantonment Magistrate may (if the Local Government so directs) be, for the purposes of this Act, a sub-district or a district, and such Magistrate shall be the Sub-Registrar or the Registrar of such sub-district or district, as the case may be.

Whenever the Governor General in Council declares any military cantonment beyond the limits of British India to be a sub-district or a district for the purposes of this Act, he shall also declare, in the case of a sub-district, what authorities shall be Registrar of the District, and Inspector General, and in the case of a district, what authority shall be Inspector General, with reference to such cantonment and the Sub-Registrar or Registrar thereof.

Absence of a Registrar from his district or vacancy in his office.

10. Whenever any Registrar other than the Registrar of a District including a Presidency town, is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector General appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate, shall be the Registrar during such absence or until the Local Government fills up the vacancy.

Whenever the Registrar of a district including a Presidency town, is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector General appoints in this behalf shall be the Registrar during such absence, or until the Local Government fills up the vacancy.

Absence of Registrar on duty in his district.

11. Whenever any Registrar is absent from his office on duty in his district, he may appoint any Sub-Registrar or other person in his district to perform, during such absence, all the duties of a Registrar, except those mentioned in sections sixty-eight and seventy-two.

Absence of Sub-Registrar or vacancy in his office.

12. Whenever any Sub-Registrar is absent, or when his office is temporarily vacant, any person whom the Registrar of the District appoints in this behalf shall be Sub-Registrar during such absence, or until the Local Government fills up the vacancy.

Appointments under sections 10, 11 or 12 to be reported to Government.

13. All appointments made under section ten, section eleven, or section twelve shall be reported to the Local Government by the Inspector General. Such report shall be either special or general, as the Local Government directs.

Suspension, removal and dismissal of Registering Officers.

The Local Government may suspend, remove or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead.

Remuneration and establishments of Registering Officers.

14. Subject to the approval of the Governor General in Council, the Local Government may assign such salaries as such Government from time to time deems proper to the Registering Officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries.

The Local Government may allow proper establishments for the several offices under this Act.

Seals of Registering Officers.

15. The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as the Local Government directs:—"The seal of the Registrar (*or* of the Sub-Registrar) of ."

Register Books.

16. The Local Government shall provide for the office of every Registering Officer the books necessary for the purposes of this Act.

The books so provided shall contain the forms from time to time prescribed by the Inspector General, with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued. Forms.

The Local Government shall supply the office of every Registrar with a fire-proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such district. Fire-proof boxes.

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## PART III.—Of Registrable Documents.

**17.** The documents next hereinafter mentioned shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or Act No. XX of 1866, or this Act came or comes into force (that is to say),— Documents of which registration is compulsory.

(1). Instruments of gift of immoveable property:

(2). Other instruments (not being wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property: [a]

(3). Instruments (not being wills) which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(4). Leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent:

Provided that the Local Government may, by order published in the official Gazette,[b] exempt from the operation of the former part of this section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

Nothing in clauses (2) and (3) of this section applies Exception of composition-deeds; and of transfers of shares and debentures in Land Companies.

(*a*) to any composition-deed,

(*b*) to any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immoveable property, or

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[a] See *Kedarnath Dutt* v. *Shamloll Khettry*, 11 Beng. 405.
[b] See *Central Provinces Gazette*, 4th December 1875, Part 1A, p. 221.

(*c*) to any endorsement upon or transfer of any debenture issued by any such Company.

Authorities to adopt.

Authorities to adopt a son, executed after the first day of January 1872 and not conferred by a will, shall also be registered.

Documents of which the registration is optional.

**18.** Any of the documents next hereinafter mentioned may be registered under this Act (that is to say),

(1) Instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property:

(2) Instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest:

(3) Leases of immoveable property for any term not exceeding one year, and leases exempted under section seventeen:

(4) Awards relating to immoveable property:

(5) Instruments which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in moveable property:

(6) Wills:

(7) Acknowledgments, Agreements, Appointments, Articles of Partnership, Assignments, Awards, Bills of Exchange, Bills of Sale, Bonds, Composition-deeds, Conditions of Sale, Contracts, Certified Copies of Decrees and Orders of Courts, Covenants, Grants, Instruments of Dissolution of Partnership, Instruments of Partition, Powers of Attorney, Promissory Notes, Releases, Settlements, Writings of Divorcement, and all other documents not hereinbefore mentioned.

Documents in language not understood by Registering Officer.

**19.** If any document duly presented for registration be in a language which the Registering Officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.

Documents containing interlineations, blanks erasures & alterations.

**20.** The Registering Officer may in his discretion refuse to accept for registration any document in which any interlineation, blank, erasure or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration. If he register such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure or alteration.

**21.** (*a*) No document not testamentary relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same. Description of parcels.

(*b*.) Houses in towns shall be described as situate on the north or other side of the street or road (mentioning it) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered. Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(*c*.) No document not testamentary containing a map or plan of any property comprised therein shall be accepted for registration unless it be accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts. Documents containing maps or plans.

**22.** Failure to comply with the provisions contained in section twenty-one, clause (*b*), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify such property. Failure to comply with rules as to description of houses and land.

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## PART IV.—Of the Time of Presentation.

**23.** Subject to the provisions contained in sections twenty-four, twenty-five and twenty-six, no document required by section seventeen to be registered, and no document mentioned in section eighteen, other than a will, shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution, Time for presenting documents of which registration is compulsory.

or, in the case of a copy of a decree or order, within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final:

Provided that, where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

**24.** If owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that on payment of a fine not exceeding ten Provision where delay in presentation is unavoidable.

times the amount of the proper registration fee, such document shall be accepted for registration.

Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

Documents executed out of British India.

25. When a document purporting to have been executed by all or any of the parties out of British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registering Officer, if satisfied,

(1) that the instrument was so executed, and

(2) that it has been presented for registration within four months after its arrival in British India,

may, on payment of the proper registration fee, accept such document for registration.

Provision where office is closed on last day of period for presentation.

26. Whenever a registration-office is closed on the last day of any period hereinbefore provided for the presentation of any document, such last day shall, for the purposes of this Act, be deemed to be the day on which the office re-opens.

Wills may be presented or deposited at any time.

27. A will may at any time be presented for registration or deposited in manner hereinafter provided.

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## PART V.—Of the Place of Registration.

Place for registering documents relating to land.

28. Save as in this Part otherwise provided, every document mentioned in section seventeen, clauses (1), (2), (3) and (4), and section eighteen, clauses (1), (2), (3) and (4), shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

Place for registering other documents.

29. Every document other than a document referred to in section twenty-eight and a copy of a decree or order, may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the Local Government at which all the persons executing and claiming under the document desire the same to be registered.

A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immoveable property, in the office of any other Sub-Registrar under the Local Government at which all the persons claiming under the decree or order desire the copy to be registered.

**30.** (*a.*) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him. Registration by Registrar.

(*b.*) The Registrar of a District including a Presidency town may receive and register any document referred to in section twenty-eight without regard to the situation in any part of British India of the property to which the document relates. Registration by Registrar at Presidency town.

**31.** In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer whose duty it is to register the same. Registration or acceptance for deposit at private residence.

But such officer may on special cause being shown attend at the residence of any person intending to register any document which would ordinarily be registered at such office, or of any person desiring to deposit a will, and register or accept for registration or deposit such document or will.

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## PART VI.—Of Presenting Documents for Registration.

**32.** Except in the case mentioned in section thirty-one, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office, Persons to present documents for registration.

by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order,

or by the representative or assign of such person,

or by the agent of such person, representative or assign, duly authorized by power of attorney executed and authenticated in manner hereinafter mentioned.

**33.** For the purposes of section thirty-two, the powers of attorney[a] next hereinafter mentioned shall alone be recognized (that is to say),— Powers of attorney recognizable for purposes of section 32.

(*a*) if the principal at the time of executing the power of attorney resides in any part of British India in which this Act is for the time being in force, a power of attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides:

(*b*) if the principal at the time aforesaid resides in any other part of British India, a power of attorney executed before and authenticated by any Magistrate:

(*c*) if the principal at the time aforesaid does not reside in British India, a power of attorney executed before and authenticated by a Notary Public, or

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[a] As to the stamp, see *In re Keshav Kásinâth*, 9 Bomb. 43.

any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India:

Proviso as to persons infirm, or in jail, or exempt from appearing in Court.

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power of attorney as is mentioned in clauses (*a*) and (*b*) of this section:—

persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;

persons who are in jail under civil or criminal process; and

persons exempt by law from personal appearance in Court.

In every such case the Registrar or Sub-Registrar or Judge (as the case may be), if satisfied that the power of attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Judge may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

Any power of attorney mentioned in this section may be proved by the production of it without further proof, when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

Enquiry before registration by registering officer.

**34.** Subject to the provisions contained in this Part and in sections forty-one, forty-three, forty-five, sixty-nine, seventy-six, and eighty-six, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation:

Provided that if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, the document may be registered.

Such appearances may be simultaneous or at different times.

The registering officer shall thereupon—

(*a*) enquire whether or not such document was executed by the persons by whom it purports to have been executed,

(*b*) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document, and

(*c*) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

**35.** If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document; Procedure on admission of execution.

or, in the case of any person appearing by a representative, assign or agent, if such representative, assign or agent admits the execution;

or, if the person executing the document is dead, and his representative or assign appears before the registering officer, and admits the execution,

the registering officer shall register the document as directed in sections fifty-eight to sixty-one inclusive.

The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

If all or any of the persons by whom the document purports to be executed deny its execution, Procedure on denial of execution, &c.

or if any such person appears to be a minor, an idiot, or a lunatic,

or if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document.

Nothing in section thirty-four, or the former part of this section, applies to copies of decrees or orders.

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## PART VII.—Of Enforcing the Appearance of Executants and Witnesses.

**36.** If any person presenting any document for registration desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or Court as the Local Government from time to time directs in this behalf to issue a summons requiring him to appear at the registration office, either in person or by duly authorized agent, as in the summons may be mentioned, and at a time named therein. Procedure where appearance of executant or witness is desired.

**37.** The officer or Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required. Officer or Court to issue and cause service of summons.

**38.** A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration office, Persons exempt from appearance at registration office.

a person in jail under civil or criminal process,

and persons exempt by law from personal appearance in Court, and who would but for the provision next hereinafter contained be required to appear in person at the registration office,

shall not be required so to appear.

In every such case, the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

Law as to summonses, commissions and witnesses.

**39.** The law in force for the time being as to summonses, commissions and compelling the attendance of witnesses, and for their remuneration in suits before civil Courts shall, save as aforesaid and *mutatis mutandis*, apply to any summons or commission issued, and any person summoned to appear under the provisions of this Act.

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## PART VIII.—Of Presenting Wills and Authorities to adopt.

Persons entitled to present wills and authorities to adopt.

**40.** The testator or any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration,

and the donor or donee of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.

Registration of wills and authorities to adopt.

**41.** A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document.

A will or authority to adopt presented for registration by any other person entitled to present it, shall be registered if the registering officer is satisfied,

(1) that the will or authority was executed by the testator or donor, as the case may be,

(2) that the testator or donor is dead, and

(3) that the person presenting the will or authority is, under section forty, entitled to present the same.

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## PART IX.—Of the Deposit of Wills.

Deposit of wills.

**42.** Any testator may either personally or by duly authorized agent deposit with any Registrar the will in a sealed cover superscribed with the name of the depositor and the nature of the document.

Procedure on deposit of wills.

**43.** On receiving such sealed cover, the Registrar, if satisfied that the depositor is the testator, or his duly authorized agent, shall transcribe in his Register Book No. 5 the superscription on such sealed cover, and note in the

register and on the sealed cover the year, month, day and hour of such presentation and receipt, together with the name of the depositor, and the name of each of the persons testifying to the identity of such depositor, and the inscription so far as it is legible on the seal of the cover.

The Registrar shall then place and retain the sealed cover in his fire-proof box.

**44.** If the depositor of any such sealed cover wishes to withdraw it, he may apply to the Registrar with whom it has been so deposited for the delivery of the cover; and the Registrar, if satisfied as to the identity of the depositor with the applicant, shall deliver the cover accordingly.

Withdrawal of sealed cover deposited under section 42.

**45.** If, on the death of the depositor of a sealed cover under section forty-two, application be made to the Registrar with whom it has been deposited to open the same, the Registrar, if satisfied that the depositor is dead, shall, in the applicant's presence, open the cover, and copy, at the applicant's expense, the contents thereof in his Book No. 3.

Proceedings on death of depositor.

When such copy has been made, the Registrar shall re-deposit the original will.

Re-deposit.

**46.** Nothing hereinbefore contained shall affect the provisions of the Indian Succession Act, section two hundred and fifty-nine, or the power of any Court by order to compel the production of any will. But whenever any such order is made, the Registrar shall copy the will in his Book No. 3 and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

Saving of Act X of 1865, section 259.

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## PART X.—Of the Effects of Registration and Non-registration.

**47.** A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

Time from which registered document operates.

**48.** All documents, not testamentary, duly registered under this Act, and relating to any property whether moveable or immoveable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession.

Registered documents relating to property when to take effect against oral agreements.

**49.** No document required by section seventeen to be registered,
shall affect any immoveable property comprised therein,
or confer any power to adopt,

Effect of non-registration of documents required to be registered.

or be received as evidence of any transaction affecting such property[a] or conferring such power,

unless it has been registered in accordance with the provisions of this Act.

Registered documents relating to land, of which registration is optional, to take effect against unregistered documents.

50. Every document of the kinds mentioned in clauses (1) and (2) of section eighteen, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

*Explanation.*—In cases where Act No. XVI of 1864 or Act No. XX of 1866 was in force in the place and at the time in and at which such unregistered document was executed, "unregistered" means not registered according to such Act, and, where the document is executed after the first day of July 1871, not registered under this Act.

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## PART XI.—Of the Duties and Powers of Registering Officers.

### (*A*). *As to the Register Books and Indexes.*

Register Books to be kept in the several offices.

51. The following Books shall be kept in the several offices hereinafter named (that is to say)—

In all Registration Offices—

Book 1, "Register of documents relating to immoveable property;"

Book 2, "Record of reasons for refusal to register;"

Book 3, "Register of wills and authorities to adopt;" and

Book 4, "Miscellaneous Register."

In the Offices of Registrars—

Book 5, "Register of deposits of wills."

In Book 1 shall be entered or filed all documents or memoranda registered under the first four clauses of sections seventeen and eighteen and all other documents mentioned in section eighteen, clause (7), which relate to immoveable property.

In Book 4 shall be entered all documents registered under clauses (5) and (7) of section eighteen, and not entered in Book 1.

Nothing in the former part of this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.

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[a] Such a document is, of course, admissible in a suit to enforce mere personal liability, 7 Mad. 296.

52. The day, hour and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it: a receipt for such document shall be given by the registering officer to the person presenting the same; and, subject to the provisions contained in section sixty-two, every document admitted to registration shall without unnecessary delay be copied in the book appropriated therefor according to the order of its admission.

Endorsements on document presented.

Receipt for document.

Documents admitted to registration to be copied.

And all such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector General.

53. All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

Entries to be numbered consecutively.

54. In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.

Current indexes and entries therein.

55. Two such indexes shall be made in all registration offices, and shall be named, respectively, Index No. I and Index No. II.

Indexes to be made by registering officers.

Index No. I shall contain the names and additions of all persons executing and of all persons claiming under every document copied into or memorandum filed in Book No. 1 or Book No. 3.

Index No. II shall contain such particulars mentioned in section twenty-one relating to every such document and memorandum as the Inspector General from time to time directs in that behalf.

A third index to be called Index No. III shall contain the names and additions of all persons executing and of all persons claiming under every document copied into Book No. 4.

Indexes Nos. I, II and III shall contain such other particulars, and shall be prepared in such form, as the Inspector General from time to time directs.

Extra particulars in indexes.

56. Every Sub-Registrar shall send to the Registrar to whom he is subordinate, at such intervals as the Inspector General from time to time directs, a copy of all entries made by such Sub-Registrar, during the last of such intervals, in Indexes Nos. I and II.

Copy of entries in Indexes Nos. I and II to be sent by Sub-Registrar to Registrar.

Every Registrar receiving such copy shall file it in his office.

Such copy to be filed by Registrar.

57. Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2 and the Indexes relating to Book No. 1 shall be at

Registering officers to allow

Inspection of certain books and indexes, and to give certified copies of entries.

all times open to inspection by any person applying to inspect the same; and subject to the provisions of section sixty-two, copies of entries in such books shall be given to all persons applying for such copies.

Subject to the same provisions, copies of entries in Books Nos. 3 and 4 and in the indexes relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer; but the requisite search for such entries shall be made only by the registering officer.

Such copies shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

(*B*). *As to the Procedure on admitting to Registration.*

Particulars to be endorsed on documents admitted to registration.

**58.** On every document admitted to registration, other than a copy of a decree or order, there shall be endorsed from time to time the following particulars (that is to say),—

(1) the signature and addition of every person admitting the execution of the document; and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;

(2) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(3) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

Such endorsements to be dated and signed by registering officer.

**59.** The registering officer shall affix the date and his signature to all endorsements made under the last preceding section, relating to the same document and made in his presence on the same day.

Certificate showing that document has been registered, and number and page of book in which it has been copied.

**60.** After such of the provisions of sections thirty-four, thirty-five, fifty-eight and fifty-nine as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered," together with the number and page of the book in which the document has been copied.

Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts

mentioned in the endorsements referred to in section fifty-nine have occurred as therein mentioned.

**61.** The endorsements and certificate referred to and mentioned in sections fifty-nine and sixty shall thereupon be copied into the margin of the Register Book, and the copy of the map or plan (if any) mentioned in section twenty-one shall be filed in Book No. 1.

Endorsements and certificate to be copied.

The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section fifty-two.

Document to be returned.

**62.** When a document is presented for registration under section nineteen, the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section nineteen, shall be filed in the registration office.

Procedure on presenting document in language unknown to registering officer.

The endorsements and certificate respectively mentioned in sections fifty-nine and sixty shall be made on the original, and for the purpose of making the copies and memoranda required by sections fifty-seven, sixty-four, sixty-five and sixty-six, the translation shall be treated as if it were the original.

**63.** Every registering officer may at his discretion administer an oath to any person examined by him under the provisions of this Act.

Power to administer oaths.

He may also at his discretion record a note of the substance of the statement made by each such person, and such statement shall be read over, or (if made in a language with which such person is not acquainted) interpreted to him in a language with which he is acquainted, and if he admits the correctness of such note, it shall be signed by the registering officer.

Record of substance of statements.

Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

### (*C.*)—*Special Duties of Sub-Registrar.*

**64.** Every Sub-Registrar on registering a document relating to immoveable property not wholly situate in his own sub-district, shall make a memorandum thereof and of the endorsement and certificate thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No. 1.

Procedure on registration of document relating to land situate in several sub-districts.

**65.** Every Sub-Registrar on registering a document relating to immoveable property situate in more districts than one, shall also forward a copy thereof and of the endorsement and certificate thereon, together with a copy

Procedure where document relates to land situate

in several districts.

of the map or plan (if any) mentioned in section twenty-one, to the Registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate.

The Registrar on receiving the same shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the Sub-Registrars subordinate to him within whose sub-district any part of such property is situate; and every Sub-Registrar receiving such memorandum shall file it in his Book No. 1.

*(D).—Special Duties of Registrar.*

Procedure on registering documents relating to land.

**66.** On registering any document not testamentary relating to immoveable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

He shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section twenty-one, to every other Registrar in whose district any part of such property is situate.

Such Registrar on receiving any such copy shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate.

Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1.

Procedure on registration under section 30, clause (*b*).

**67.** On any document being registered under section thirty, clause (*b*), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in the first clause of section sixty-six.

*(E.)—Of the controlling Powers of Registrars and Inspectors General.*

Registrar to superintend and control Sub-Registrars.

**68.** Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him, or in respect of the rectification of any error regarding the book or the office in which any document shall have been registered.

Inspector General to superintend

**69.** The Inspector General shall exercise a general superintendence over all the registration offices in the territories under the Local Government, and

shall have power from time to time to frame rules consistent with this Act— registration offices.

providing for the safe custody of books, papers and documents, and also for the destruction of such books, papers and documents as need no longer be kept; His power to frame rules.

declaring what languages shall be deemed to be commonly used in each district;

declaring what territorial divisions shall be recognized under section twenty-one;

regulating the amount of fines imposed under section twenty-four;

regulating the exercise of the discretion reposed in the registering officer by section sixty-three;

regulating the form in which registering officers are to make memoranda of documents;

regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section fifty-one;

declaring the particulars to be contained in Indexes Nos. I, II and III, respectively;

declaring the holidays that shall be observed in the registration offices;

and, generally, regulating the proceedings of the Registrars and Sub-Registrars.

The rules so framed shall be submitted to the Local Government for approval, and, after they have been approved, they shall be published in the official Gazette[a] and shall then have the same force as if they were inserted in this Act.

**70.** The Inspector General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under section twenty-four or section thirty-four and the amount of the proper registration fee. His power to remit fines.

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## PART XII.—Of Refusal to register.

**71.** Every registering officer refusing to register a document, Reasons for refusal to register to be recorded.

except (1) where the property to which the document relates is not situate within his district or sub-district, or (2) where the registering officer being a Registrar declines to accept the document on the ground that it ought to be registered in the office of a Sub-Registrar,

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[a] See the Bengal Rules, *Calcutta Gazette*, 24th December 1873, p. 1438: 21st July 1875, p. 897. Bombay Rules, *Bombay Government Gazette*, 3rd August 1871, p. 830: 24th August 1871, p. 924: 25th September 1873, p. 791: 20th August 1874, p. 689.

shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document; and on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

Registrar may alter or revise orders of Sub-Registrar refusing registration.

**72.** An appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate if presented to such Registrar within thirty days from the date of the order, and the Registrar may reverse or alter such order:

Any Registrar refusing to direct the registration of any document shall make an order of refusal and record the reasons for such order in his Book No. 2, and on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

Procedure where Registrar refuses to register or direct registration.

**73.** If a Registrar makes under section seventy-one or section seventy-two an order of refusal to register or to direct the registration of any document,

or if he has made a like order under section eighty-two or section eighty-three of Act No. XX of 1866,

or if the Sub-Registrar has refused to register the document on the ground that the person, or one of the persons, by whom the document purports to have been executed, has denied the execution,

or if the Registrar has himself as Sub-Registrar made an order of refusal under section seventy-one,

any person claiming under such document, or his representative, assign or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply by petition to the District Court, in order to establish his right to have the document registered.

Petition.

**74.** The petition shall be in the form contained in the second schedule hereto annexed or as near thereto as circumstances permit, and shall be accompanied by copies of the reasons recorded under sections seventy-one and seventy-two; the statements in the petition shall be verified by the petitioner in manner required by law for the verification of plaints; and the petition may be amended by permission of the Court.

To be verified.

Court to fix day for hearing petition.

**75.** The Court shall fix a day for the hearing of the petition not less than two days after the service next hereinafter mentioned, and shall direct a

copy of the petition, with a notice at the foot thereof of the day so fixed, to be served on the registering officer, and on such other persons (if any) as the Court thinks fit; and the provisions of the Code of Civil Procedure as to the service and endorsement of summonses shall apply, *mutatis mutandis,* to copies of petitions under this section.

and copy thereof to be served.

**76.** The Court may summon and enforce the attendance of witnesses and compel them to give evidence,

Court may order document to be registered.

and on the day so fixed as aforesaid, or on any day to which the hearing of the petition may be adjourned, shall enquire—

(*a.*) whether the document has been executed, and

(*b.*) whether the requirements of the law for the time being in force have been complied with on the part of the petitioner so as to entitle the document to registration.

If it finds that the document has been executed and that the said requirements have been complied with, the Court shall order the document to be registered,

and if the document be duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections fifty-eight, fifty-nine and sixty.

Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

Provision for case in which Judge is registering officer.

Provided that when the officer presiding over the District Court has himself as registering officer made any order complained of under this section, the petition shall, within sixty days after the making of such order, be presented to the High Court, and the provisions contained in the former part of this section shall, *mutatis mutandis,* apply to such petition and the order (if any) thereon.

The District Court or the High Court, as the case may be, may direct by whom the whole or any part of the costs of any proceedings before it under this Part shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure.

No appeal lies from any order made under this section.[a]

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## PART XIII.—Of the Fees for Registration, Searches and Copies.

Fees to be fixed by Local Government.

**77.** Subject to the approval of the Governor General in Council, the Local Government shall prepare a table of fees payable—

for the registration of documents:

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[a] As to the inability of the District Court to review an order passed under this section, see 10 Beng. 394.

for searching the registers :

for making or granting copies of reasons, entries or documents, before, on or after registration :

And of extra or additional fees payable—

for every registration under section thirty :

for the issue of commissions :

for filing translations :

for attending at private residences :

and for such other matters as appear to the Local Government necessary to effect the purposes of this Act.

Alteration of fees.

The Local Government may from time to time, subject to the like approval, alter such table.

Publication of fees.

A table of the fees so payable shall be published in the official Gazette,[a] and a copy thereof in English and the Vernacular language of the district shall be exposed to public view in every registration office.

Fees payable on presentation.

78. All fees for the registration of documents under this Act shall be payable on the presentation of such documents.

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## PART XIV.—PENALTIES.

Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure.

79. Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause injury, as defined in the Indian Penal Code to any person, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

Penalty for certain other offences.

80. Whoever commits any of the following offences shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both :

Making false statements before registering officer.

(*a*) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act,

Delivering false copy or translation.

(*b*) intentionally delivers to a registering officer in any proceeding under section nineteen or section twenty-one a false copy or translation of a document, or a false copy of a map or plan,

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[a] See *Bombay Government Gazette*, 18th June 1874, p. 510.

(*c*) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act,

False personation.

(*d*) abets within the meaning of the Indian Penal Code anything made punishable by this Act.

Abetment of offences under this Act.

**81.** A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be instituted[a] by or with the permission of the Inspector General, the Branch Inspector General of Sindh, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

Registering officer may institute prosecutions.

Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Subordinate Magistrate of the first class:

Provided that in imposing penalties under this Act, no such Court or officer shall exceed the limits of jurisdiction prescribed by the law for the time being in force as to such Court or officer.

All fines imposed under this Act may be recovered, if for offences committed outside the limits of the Presidency towns, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act regulating the Police of such towns for the time being in force.

**82.** Every registering officer appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Registering officers to be deemed public servants.

Every person shall be legally bound to furnish information to such registering officer when required by him to do so. And in section two hundred and twenty-eight of the same Code, the words "judicial proceeding" shall include any proceeding under this Act.

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## PART XV.—MISCELLANEOUS.

**83.** Documents (other than wills) remaining unclaimed in any registration office, for a period exceeding two years, may be destroyed.

Destruction of unclaimed documents.

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[a] *i. e.*, commenced, *The Queen* v. *Sheogolam Das*, 6 Beng. 692.

Registering officer not liable for thing *bonâ fide* done in official capacity.

**84.** No registering officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity.

Nothing so done invalidated by defect in appointment or procedure.

**85.** Nothing done in good faith pursuant to this Act, or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

Registration of documents executed by Government officers or certain public functionaries.

**86.** Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the Administrator General of Bengal, Madras or Bombay, or for any Official Trustee, or for the Sheriff, Receiver or Registrar of a High Court, to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section fifty-eight.

But when any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he think fit, refer to any Secretary to Government or to such officer of Government, Administrator General, Official Trustee, Sheriff, Receiver or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

*Exemptions from Act.*

Exemption of certain documents executed by or in favour of Government.

**87.** Nothing contained in this Act or any Act hereby repealed shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps:—

(*a.*) Documents issued, received or attested by any officer engaged in making a settlement or revision of settlement of land-revenue, and which form part of the records of such settlement.

(*b.*) Documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey.

(*c.*) Documents which, under any law for the time being in force, or filed periodically in any revenue office by patwáris or other officers charged with the preparation of village-records.

(*d.*) Sanads, inám title-deeds, and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land.

But all such documents and maps shall, for the purposes of sections forty-eight and forty-nine, be deemed to have been and to be registered in accordance with the provisions of this Act.

Inspection and copies of such documents.

**88.** Subject to such rules and the previous payment of such fees as the Local Government from time to time prescribes in this behalf, all documents and maps mentioned in section eighty-seven, clauses (*a*), (*b*) and (*c*), and all registers of the documents mentioned in clause (*d*), shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

Recognition in Oudh and Burma for three months of powers of attorney not duly executed.

**89.** From the first of July to the first of October 1871, in the territories respectively administered by the Chief Commissioners of Oudh and British Burma, a power of attorney not duly executed according to the provisions of section thirty-three shall, notwithstanding anything therein contained, be deemed to have been duly executed under the provisions of the same section, if the registering officer is satisfied that it has been executed in good faith, and if a power of attorney attested under the provisions of this Act cannot be obtained within the time during which the document sought to be registered can, under such provisions, be accepted for registration.

Burmese registration rules confirmed.

**90.** All rules relating to registration heretofore enforced in British Burma shall be deemed to have had the force of law, and no suit or other proceeding shall be maintained against any officer or other person in respect of anything done under any of the said rules.

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## FIRST SCHEDULE.

(*See section* 2).

| Number and year. | Title. | Extent of repeal. |
|---|---|---|
| XXII of 1864 | An Act to make provision for the Administration of Military Cantonments. | Sections ten and forty-five. |
| XX of 1866 | An Act to provide for the registration of assurances. | The whole. |
| XXVII of 1868 | An Act to exempt certain instruments from the Indian Registration Act, 1866. | The whole. |

FIRST SCHEDULE,—*(concluded.)*

| Number and year. | Title. | Extent of repeal. |
|---|---|---|
| VII of 1870 | The Court Fees Act. | In schedule I, the number and words following: "3. Petition under the Indian Registration Act, section fifty-three." |
| | All Rules relating to the registration of documents and having the force of law in Oudh. | The whole. |
| | All Rules relating to the registration of documents and having the force of law in any part of British Burma. | The whole. |

## SECOND SCHEDULE.

*Forms of Petition under section* 73.

Stamp eight annas.

To the Judge of the District Court [*or* To the Deputy Commissioner] of

The day of 18

The petition of A. B. of

Sheweth—

1. That by an instrument dated the day of, and made between C. D. of the one part and your petitioner of the other part, certain lands were conveyed to your petitioner absolutely.

2. That such instrument was executed by the said C. D. on the day of 18 .

3. That the property to which such instrument relates is situate in the Sub-District of the Sub-Registrar of and in the District of

4. That on the day of your petitioner presented the said instrument for registration under "The Indian Registration Act, 1871," in the office of the said Sub-Registrar.

5. That the said Sub-Registrar thereupon made an order of refusal, dated the day of 18 , to register the said instrument and gave your petitioner a copy, which is filed herewith, of the reasons for such order.

6. That your petitioner on the day of appealed to the Registrar of against such order.

7. That the said Registrar thereupon made an order of refusal, dated the day of to direct the registration of the said instrument and gave your petitioner a copy, which is filed herewith, of the reasons for such order.

8. That the reasons referred to in paragraphs 5 and 7 of this petition are, as your petitioner submits, insufficient.

Your petitioner therefore prays that your Honour will order the said Sub-Registrar to register the said instrument.

A. B.

*Another Form.*

To the Judge of the District Court [*or* To the Deputy Commissioner] of

The day of 18

The petition of A. B. of

Sheweth—

1. That by an instrument dated the day of and made between C. D. of the one part and your petitioner of the other part, certain lands were conveyed to your petitioner by way of mortgage to secure the sum of one thousand rupees.

2. That such instrument was executed by the said C. D. on the day of 18 .

3. That the property to which such instrument relates is situate in the Sub-District of the Sub-Registrar of and in the District of

4. That on the day of your petitioner presented the said instrument for registration under the Indian Registration Act, 1871, in the office of the said Sub-Registrar, and the said C. D. appeared personally before the said Sub-Registrar and falsely denied the execution of the said instrument.

5. That the said Sub-Registrar thereupon made an order of refusal dated the day of 18 to register the said instrument and gave your petitioner a copy, which is filed herewith, of the reasons for such order.

6. That your petitioner has complied with the requirements of the said Act so far as it has been possible for him to do so.

Your petitioner therefore prays that your Honour will order the said Sub-Registrar to register the said instrument.

A. B.

*Form of Verification.*

I, A. B., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed) A. B.

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# THE INDIAN LIMITATION ACT, 1871.

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## CONTENTS.

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PREAMBLE.

PART I.—PRELIMINARY.

SECTIONS.

1. Short title.
   Extent of Act.
   Commencement.
2. [*Repealed.*]
3. Interpretation-clause.

PART II.—LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

4. Dismissal of suits, &c., instituted, &c., after period of limitation.
5. Proviso where Court is closed when period expires.
   Proviso as to appeals and applications for review.
6. Different periods of limitation prescribed by local laws.
   Appeals from decrees of High Courts on original side.
7. Legal disability.
8. Disability of one joint-creditor.
9. Continuous running of time.
10. Suits against express trustees and their representatives.
11. Suits on foreign contracts.
12. Foreign limitation-law.

PART III.—COMPUTATION OF PERIOD OF LIMITATION.

SECTIONS.

13. Exclusion of day on which right to sue accrues.
Exclusions in case of appeals and certain applications.
14. Exclusion of time of defendant's absence from British India.
15. Exclusion of time of suing *bonâ fide* in Court without jurisdiction.
16. Exclusion of time during which commencement of suit is stayed by injunction.
17. Exclusion of time during which judgment-debtor sues to set aside execution sale.
18. Effect of death before right to sue accrues.
19. Effect of fraud.
20. Effect of acknowledgment in writing.
21. Effect of paying interest as such.
Effect of part-payment of principal.
22. Effect of substituting or adding new plaintiff or defendant.
Proviso where original plaintiff dies.
Proviso where original defendant dies.
23. Computation where there are successive breaches of contract.
Computation where the breach is continuing.
24. Continuing nusance.
25. Suit for compensation for act becoming unlawful.
26. Computation of time mentioned in instruments.

PART IV.—ACQUISITION OF OWNERSHIP BY POSSESSION.

27. Acquisition of right to easements.
28. Exclusion in favour of reversioner of servient tenement.
29. Extinguishment of right to land or hereditary office.

FIRST SCHEDULE [*Repealed*].
SECOND SCHEDULE, First division (suits).
Second division (appeals).
Third division (applications).

## ACT No. IX OF 1871.

*Received the Governor General's assent on the 24th March* 1871.

## An Act for the Limitation of Suits and for other purposes.

WHEREAS it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; And whereas Preamble.

it is also expedient to provide rules for acquiring ownership by possession; It is hereby enacted as follows:—

## PART I.—Preliminary.

Short title.

1. This Act may be called 'The Indian Limitation Act, 1871':

Extent of Act.

It extends to the whole of British India;[a] but nothing contained in sections two and three or in Parts II and III applies—

(*a*) to suits[b] instituted before the first day of April 1873,

(*b*) to suits under the Indian Divorce Act,

(*c*) to suits under Madras Regulation VI of 1831.

This Act shall come into force on the first day of July 1871.

Commencement.

2. [*Repealed by Act No. XII of* 1873.]

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context—

'minor' means a person who has not completed his age of eighteen years:

'plaintiff' includes also any person through whom a plaintiff claims:

'nusance' means any thing done to the hurt or annoyance of another's immoveable property and not amounting to a trespass:

'bill of exchange' includes also a hundí:

'trustee' does not include a benámídár, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title:

'registered' means duly registered under the law for the registration of documents in force at the time and place of executing the document referred to in the context:

'foreign country' means any country other than British India:

and nothing shall be deemed to be done in 'good faith' which is not done with due care and attention.

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## PART II.—Limitation of Suits, Appeals and Applications.

Dismissal of suits, &c., instituted, &c., after period of limitation.

4. Subject to the provisions contained in sections five to twenty-six (inclusive), every suit instituted, appeal presented, and application made after the period of limitation prescribed therefor by the second schedule hereto annexed, shall be dismissed, although limitation has not been set up as a defence.

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[a] It has also been applied (with slight modifications) to Mysore, *Gazette of India*, 22nd July 1871, p. 544, and to the Haidarábád Assigned Districts and the Cantonment of Sikandarábád, *Gazette of India*, 12th August 1871, p. 620.

[b] See 11 Bomb. 111.

*Explanation.*—A suit is instituted in ordinary cases when the plaint is presented to the proper officer: in the case of a pauper, when his application for leave to sue as a pauper is filed; and in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

*Illustrations.*

(*a*).—A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence and judgment is given for the plaintiff. The defendant appeals. The appellate court must dismiss the suit.

(*b*).—An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

Proviso where Court is closed when period expires.

5. *a.* If the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, presented or made on the day that the Court re-opens:

Proviso as to appeals and applications for review.

*b.* Any appeal or application for a review of judgment may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not presenting the appeal or making the application within such period.

Different periods of limitation prescribed by local laws.

6. When, by any law not mentioned in the schedule[a] hereto annexed and now or hereafter to be in force in any part of British India, a period of limitation differing from that prescribed by this Act is specially prescribed for any suits, appeals or applications, nothing herein contained shall affect such law.

Appeals from decrees of High Courts on original side.

And nothing herein contained shall affect the periods of limitation prescribed for appeals from, or applications to review, any decree, order or judgment of a High Court in the exercise of its original jurisdiction.

*Legal Disability.*

Legal disability.

7. If a person entitled to sue be, at the time the right to sue accrued, a minor, or insane, or an idiot,[b]

he may institute the suit within the same period after the disability has ceased, or (when he is at the time of the accrual affected by two disabilities) after both disabilities have ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.

When his disability continues up to his death, his representative in interest[c] may institute the suit within the same period after the death as

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[a] *i. e.*, the first schedule.

[b] The case of a married woman is designedly omitted.

[c] 15 Beng. 357.

would otherwise have been allowed from the time prescribed therefor in the third column of the same schedule.

Nothing in this section shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby the period within which the suit must be brought.

*Illustrations.*

(*a*). The right to sue for the hire of a boat accrues to A during his minority. He comes of age four years after the accrual of the right. He may institute his suit at any time within three years from the date of his coming of age.

(*b*). A, to whom a right to sue for a legacy has accrued during his minority, attains full age eleven years after such right accrued. A has, under the ordinary law, only one year remaining within which to sue. But under this section an extension of two years will be allowed him, making in all a period of three years from the date of his majority, within which he may bring his suit.

(*c*). A right to sue for an hereditary office accrues to A, who at the time is insane. Six years after the accrual of the right A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under this section.

(*d*). A right to sue as landlord to recover possession from a tenant accrues to A who is an idiot. A dies three years after the accrual of the right, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. This section does not extend that time.

Disability of one joint creditor.

8. When one of several joint creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of such person, time will run against them all: but where no such discharge can be given, time will not run as against any of them until they all are free from disability.

Continuous running of time.

9. When once time has begun to run, no subsequent disability or inability to sue stops it:

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.[a]

Suits against express trustees and their representatives.

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his representatives, for the purpose of following in his or their hands such property, shall be barred by any length of time.

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[a] *Seagram* v. *Knight*, L. R. 2 Ch. Appeals, 632.

*Explanation.*—A purchaser in good faith for value from a trustee is not his representative within the meaning of this section.

**11.** Suits in British India on contracts entered into in a foreign country are subject to the rules prescribed by this Act.[a]

Suits on foreign contracts.

**12.** No foreign rule of limitations shall be a defence to a suit in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule.

Foreign limitation law.

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## PART III.—Computation of Period of Limitation.

**13.** In computing the period of limitation prescribed for any suit, the day on which the right to sue accrued shall be excluded.

Exclusion of day on which right to sue accrues.

In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper, an application to the High Court for the admission of a special appeal, and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree,[b] sentence or order appealed against or sought to be reviewed, shall be excluded.

Exclusions in case of appeals and certain applications.

In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

**14.** In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall be excluded, unless service of a summons to appear and answer in the suit can, during such absence, be made under the Code of Civil Procedure, section sixty.

Exclusion of time of defendant's absence from British India.

**15.** In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another suit, whether in a Court of first instance or in a Court of appeal, against the same defendant or some person whom he represents, shall be excluded, where the last-mentioned suit is founded upon the same right to sue, and is instituted in good faith in a Court which from defect of jurisdiction, or other cause of a like nature, is unable to try it.

Exclusion of time of suing *bonâ fide* in Court without jurisdiction.

*Explanation* 1.—In excluding the time during which a former suit was pending, the day on which that suit was instituted, and the day on which the proceedings therein ended, shall both be counted.

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[a] *Hubert* v. *Steiner*, 2 Scott, 304.

[b] The appellant cannot claim to exclude the time requisite for obtaining a copy of the *judgment*, 21 Suth. W. R. Civil Rulings 308.

*Explanation* 2.—A plaintiff resisting an appeal presented on the ground of want of jurisdiction, shall be deemed to be prosecuting a suit within the meaning of this section.

Exclusion of time during which commencement of suit is stayed by injunction.

**16.** In computing the period of limitation prescribed for any suit, the commencement of which has been stayed by injunction,[a] the time of the continuance of the injunction shall be excluded.

Exclusion of time during which judgment-debtor sues to set aside execution sale.

**17.** In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a suit to set aside the sale shall be excluded.

Effect of death before right to sue accrues.

**18.** When a person who would, if he were living, have a right to sue, dies before the right accrues, the period of limitation shall be computed from the time when there is a representative in interest of the deceased capable of suing.

When a person against whom, if he were living, a right to sue would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a representative whom the plaintiff may sue.

Nothing in the former part of this section applies to suits for the possession of land or of an hereditary office.

Effect of fraud.

**19.** When any person having a right to sue has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

and where any document necessary[b] to establish such right has been fraudulently concealed,

the time limited for commencing a suit,

(*a*) against the person guilty of the fraud or accessory thereto, or,

(*b*) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

Effect of acknowledgment in writing.

**20.** *a.* No promise or acknowledgment in respect of a debt or legacy shall take the case out of the operation of this Act, unless such promise or acknowledgment is contained in some writing signed,[c] before the expiration of

[a] The Panjáb Chief Court has held that this includes an order under Act No. IV of 1872, s. 29, 9 Panjáb Record, 216.

[b] 7 Mad. 24.

[c] This includes 'marked,' 7 Mad. 358.

the prescribed period, by the party to be charged therewith or by his agent[a] generally or specially authorized in this behalf.

*b.* When such writing exists, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the promise or acknowledgment was signed.

*c.* When the writing containing the promise or acknowledgment is undated, oral evidence may be given of the time when it was signed.[b] But when it is alleged to have been destroyed or lost, oral evidence of its contents shall not be received.[c]

*Explanation* 1.—For the purposes of this section, a promise or acknowledgment may be sufficient, though it omits to specify the exact amount of the debt or legacy, or avers that the time for payment or delivery has not yet come, or is accompanied by a refusal to pay or deliver, or is coupled with a claim to a set-off, or is addressed to any person other than the creditor or legatee;

but it must amount to an express undertaking to pay or deliver the debt or legacy or to an unqualified admission of the liability as subsisting.

*Explanation* 2.—Nothing in this section renders one of several partners or executors chargeable by reason only of a written promise or acknowledgment signed by another of them.

*Illustrations.*

Z, a bond-debtor, himself writes a letter promising to pay the debt to his creditor A. Z affixes his seal, but does not sign the letter:

Z pays part of the debt and promises orally to pay the rest:

Z publishes an advertisement, requesting his creditors to bring in their claims for examination:

In none of these cases is the debt taken out of the operation of this Act.

Effect of payment of interest as such.

**21.** When interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent generally or specially authorized in this behalf,

Effect of part-payment of principal.

or when part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent generally or specially authorized in this behalf,

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made:

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[a] 19 & 20 Vic., c. 97, s. 13.
[b] *Edmonds* v. *Downes*, 2 C. & M. 459, 463.
[c] Contra, *Haydon* v. *Williams*, 7 Bing. 163.

Provided that, in the case of part-payment of principal, the debt has arisen from a contract in writing,[a] and the fact of the payment appears in the handwriting of the person making the same, on the instrument, or in his own books, or in the books of the creditor.

Effect of substituting or adding new plaintiff or defendant.

22. When, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have commenced when he was so made a party:

Proviso where original plaintiff dies.

Provided that, when a plaintiff dies, and the suit is continued by his representatives in interest, it shall, as regards them, be deemed to have commenced when it was instituted by the deceased plaintiff:

Proviso where original defendant dies.

Provided also, that, when a defendant dies, and the suit is continued against his representatives in interest, it shall, as regards them, be deemed to have been commenced when it was instituted against the deceased defendant.

Computation where there are successive breaches of contract. Computation where the breach is continuing.

23. In the case of a suit for the breach of a contract, where there are successive breaches, a fresh right to sue arises, and a fresh period of limitation begins to run, upon every fresh breach; and where the breach is a continuing breach, a fresh right to sue arises, and a fresh period of limitation begins to run, at every moment of the time during which the breach continues.

Nothing in the former part of this section applies to suits for the breach of contracts for the payment of money by instalments, where, on default made in payment of one instalment, the whole becomes due.

*Illustrations.*

*(a).*—A contracts to pay an annuity to B for his life by quarterly instalments. A fails to pay any of the instalments. Here upon every fresh failure, a fresh right to sue arises and a fresh period of limitation begins to run; and this Act may bar the remedy on the earlier breaches without affecting the remedy on the later breaches.

*(b).*—A, a tenant, covenants with B, his landlord, to keep certain buildings in repair. At every moment of the time during which the buildings continue out of repair and B retains his right of entry, a fresh right to sue arises and a fresh period of limitation begins to run.

Continuing nusance.

24. In the case of a continuing nusance a fresh right to sue arises, and a fresh period of limitation begins to run, at every moment of the time during which the nusance continues.

*Illustration.*

A diverts B's watercourse. At every moment of the time during which the diversion continues and B retains his right of entry, a fresh right to sue arises and a fresh period of limitation begins to run.

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[a] This does not include an entry of an account stated made by a debtor in his creditor's books, 10 Bomb. 377.

**25.** In the case of a suit for compensation for an act lawful in itself, which becomes unlawful in case it causes damage, the period of limitation shall be computed from the time when the damage accrues.[a]

Suit for compensation for act becoming unlawful.

*Illustration.*

A owns the surface of a field. B owns the sub-soil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation runs from the time of the subsidence.

**26.** All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.[b]

Computation of time mentioned in instruments.

*Illustrations.*

(*a*).—A Hindú makes a promissory note, bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiry of four months after date computed according to the Gregorian calendar.

(*b*).—A Hindú makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiry of one year after date computed according to the Gregorian calendar.

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## PART IV.—Acquisition of Ownership by Possession.

**27.** Where the access and use of light or air to and for any building has been peaceably enjoyed therewith, as an easement, and as of right, without interruption, and for twenty years,

Acquisition of right to easements.

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right,[c] without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water, or other easement, shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

*Explanation.*—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for

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[a] *Bonomi* v. *Backhouse*, E. B. & E. 654.

[b] In computing the periods of limitation prescribed by this Act, regard is had to the definition of 'year' and 'month' in Act No. 2 of 1868, sec. 2, cl. (4).

[c] 15 Beng. 361.

one year after the claimant has notice thereof and of the person making or authorizing the same to be made.[a]

*Illustrations.*

(*a*).—A suit is brought in 1871 for obstructing a right of way. The defendant admits the obstruction but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him claiming title thereto as an easement and as of right, without interruption, from 1st January 1850 to 1st January 1870. The plaintiff is entitled to judgment.

(*b*).—In a like suit also brought in 1871 the plaintiff merely proves that he enjoyed the right in manner aforesaid from 1848 to 1868. The suit shall be dismissed, as no exercise of the right by actual user has been proved to have taken place within two years next before the institution of the suit.

(*c*).—In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had asked his leave to enjoy the right. The suit shall be dismissed.

Exclusion in favour of reversioner of servient tenement.

**28.** Provided that, when any land or water upon, over or from which any easement (other than the access and use of light and air) has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof,

the time of the enjoyment of such easement during the continuance of such interest or term, shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.[b]

*Illustration.*

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C, a deceased Hindú widow, had a life interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

Extinguishment of right to land or hereditary office.

**29.** At the determination of the period hereby limited to any person for instituting a suit for possession of any land or hereditary office, his right to such land or office shall be extinguished.[c]

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FIRST SCHEDULE.—[*Repealed by Act No. XII of* 1873.]

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[a] See 2 & 3 Wm. IV, c. 71, ss. 2, 3, 4. [b] See 2 & 3 Wm. IV, c. 71, s. 28.
[c] See 3 & 4 Wm. IV, c. 27, s. 34.

## SECOND SCHEDULE.

*(See section 4).*

FIRST DIVISION: SUITS.

| Description of suit. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | *Part I.—Thirty days.* | |
| 1.—To contest an award of the Board of Revenue under Act No. XXIII of 1863 (*to provide for the adjudication of claims to waste-lands*). | Thirty days ... | When notice of the award is delivered to the plaintiff. |
| | *Part II.—Ninety days.* | |
| 2.—For doing, or for omitting to do, an act in pursuance of any enactment in force for the time being in British India. | Ninety days ... | When the act or omission took place. |
| | *Part III.—Six months.* | |
| 3.—Under Act No. XIV of 1859 (*to provide for the limitation of suits*), section fifteen, to recover possession of immoveable property. | Six months . | When the dispossession occurs. |
| 4.—Under Act No. IX of 1860 (*to provide for the speedy determination of certain disputes between workmen engaged in Railway and other public works and their employers*), section one. | Ditto ... | When the wages, hire, or price of work claimed accrued due. |
| 5.—Under Act No. V of 1866 (*to provide a summary procedure on bills of exchange, and to amend, in certain respects, the commercial law of British India*). | Ditto . | When the bill or promissory note becomes due and payable. |
| | *Part IV.—One year.* | |
| 6.—Upon a Statute, Act, Regulation, or Bye-law, for a penalty or forfeiture. | One year ... | When the penalty or forfeiture is incurred. |
| 7.—For the wages of a domestic servant, artisan or labourer not provided for by this schedule, No. 4. | Ditto ... | When the wages sued for accrue due. |

SECOND SCHEDULE—*continued.*

FIRST DIVISION: SUITS—continued.

| Description of suit. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | *Part IV.—One year,*—contd. | |
| 8.—For the price of food or drink sold by the keeper of a hotel, tavern or lodging-house. | One year ... | When the food or drink is delivered. |
| 9.—For the price of lodging ... | Ditto ... | When the lodging ends. |
| 10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract. | Ditto ... | When the purchaser takes actual possession under the sale sought to be impeached. |
| 11.—For damages for infringing copyright or any other exclusive privilege. | Ditto ... | The date of the infringement. |
| 12.—By executors, administrators or representatives under Act No. XII of 1855 (*to enable the executors, administrators or representatives to sue and be sued for certain wrongs*). | Ditto ... | The date of the death of the person wronged. |
| 13.—By executors, administrators or representatives under Act No. XIII of 1855 (*to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong*). | Ditto ... | The date of the death of the person killed. |
| 14.—To set aside any of the following sales:—<br>(*a*) sale in execution of a decree of a Civil Court;<br>(*b*) sale in pursuance of a decree or order of a Collector or other officer of revenue;<br>(*c*) sale for arrears of Government revenue or for any demand recoverable as such arrears;<br>(*d*) sale of a patní taluq sold for current arrears of rent. | Ditto ... | When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought. |

SECOND SCHEDULE—*continued.*

FIRST DIVISION: SUITS—continued.

| Description of suit. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | *Part IV.—One year,*—contd. | |
| *Explanation.*—In this clause 'patní' includes any intermediate tenure saleable for current arrears of rent. | | |
| 15.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.[a] | One year ... | The date of the final decision or order in the case by a Court competent to determine it finally. |
| 16.—To set aside any act of an officer of Government in his official capacity, not herein otherwise expressly provided for. | Ditto ... | The date of the act. |
| 17.—Against Government to set aside any attachment, lease or transfer of immoveable property by the revenue authorities for arrears of Government revenue. | Ditto ... | When the attachment, lease or transfer is made. |
| 18.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears. | Ditto ... | When the payment is made. |
| 19.—Against Government for compensation for land acquired for public purposes.[b] | Ditto ... | The date of determining the amount of the compensation. |
| 20.—Like suit for compensation when the acquisition is not completed. | Ditto ... | The date of the refusal to complete. |
| 21.—For false imprisonment. ... | Ditto ... | When the imprisonment ends. |
| 22.—For any other injury to the person. | Ditto ... | When the injury is committed. |
| 23.—For a malicious prosecution ... | Ditto ... | When the plaintiff is acquitted.[c] |

[a] For example, the grant of a certificate under Act No. XXVII of 1860.
[b] See Act No. X of 1870, s. 58.
[c] The words 'or the prosecution is otherwise terminated' should have been added.

## SECOND SCHEDULE—*continued.*

FIRST DIVISION: SUITS—continued.

| Description of suit. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | *Part IV.—one year,*—contd. | |
| 24.—For libel ... ... | One year ... | When the libel is published. |
| 25.—For slander ... ... | Ditto ... | When the words are spoken. |
| 26.—For taking or damaging moveable property. | Ditto ... | When the taking or damage occurs. |
| 27.—For loss of service occasioned by the seduction of the plaintiff's servant or daughter. | Ditto ... | When the loss occurs. |
| 28.—For inducing a person to break a contract with the plaintiff. | Ditto ... | The date of the breach. |
| 29.—For an illegal, irregular or excessive distress. | Ditto . | The date of the distress. |
| 30.—For wrongful seizure of moveable property under legal process. | Ditto ... | The date of the seizure. |
| | *Part V.—Two years.* | |
| 31.—For obstructing a way or a watercourse. | Two years ... | The date of the obstruction. |
| 32.—For diverting a watercourse ... | Ditto ... | The date of the diversion. |
| 33.—For wrongfully detaining title deeds. | Ditto ... | When the title to the property comprised in the deeds is adjudged to the plaintiff, or the detainer's possession otherwise becomes unlawful. |
| 34.—For wrongfully detaining any other moveable property. | Ditto ... | When the detainer's possession becomes unlawful. |
| 35.—For specific recovery of moveable property in cases not provided for by this schedule, numbers 48 and 49.[a] | Ditto ... | When the property is demanded and refused. |

*Sic.* Read 'numbers 47 and 48.'

SECOND SCHEDULE—*continued.*

FIRST DIVISION: SUITS—continued.

| Description of suit. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | *Part V.—Two years,*—contd. | |
| 36.—Against a carrier for losing or injuring goods. | Two years ... | When the loss or injury occurs. |
| 37.—Against a carrier for delay in delivering goods. | Ditto ... | When the goods ought to be delivered. |
| 38.—Against one who, having a right to use property for specific purposes, perverts it to other purposes. | Ditto ... | The time of the perversion. |
| 39.—Under Act No. XII of 1855 (*to enable executors, administrators or representatives to sue and be sued for certain wrongs*) against an executor, administrator or other representative. | Ditto ... | When the wrong complained of is done. |
| 40.—For compensation for any wrong, malfeasance, nonfeasance or misfeasance, independent of contract and not herein specially provided for. | Ditto ... | When the wrong is done or the default happens. |
| 41.—For the recovery of a wife ... | Ditto ... | When possession is demanded and refused. |
| 42.—For the restitution of conjugal rights. | Ditto ... | When restitution is demanded and refused. |
| | *Part VI.—Three years.* | |
| 43.—For trespass upon immoveable property. | Three years ... | When the trespass takes place. |
| 44.—To contest an award under any of the following Regulations of the Bengal Code :— VII of 1822, IX of 1825, and IX of 1833. | Ditto ... | The date of the final award or order in the case. |
| 45.—By a party bound by such award to recover any property comprised therein. | Ditto ... | Ditto. |

SECOND SCHEDULE—*continued.*

FIRST DIVISION : SUITS—continued.

| Description of suit. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | *Part VI.—Three years,*—contd. | |
| 46.—By any person bound by an order respecting the possession of property made under Act No. XVI of 1838, section one, clause two, or Act No. X of 1872, chapter forty[a], or Bombay Act No. V of 1864, or by any one claiming under such person, to recover the property comprised in such order. | Three years ... | The date of the final order in the case. |
| 47.—For lost moveable property not dishonestly misappropriated or converted. | Ditto ... | When the property is demanded and refused. |
| 48.—For moveable property acquired by theft, extortion, cheating, or dishonest misappropriation or conversion. | Ditto ... | Ditto. |
| 49.—For the hire of animals, vehicles, boats or household furniture. | Ditto ... | When the hire becomes payable. |
| 50.—For the balance of money advanced in payment of goods to be delivered. | Ditto ... | When the goods ought to be delivered. |
| 51.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon. | Ditto ... | The date of the delivery of the goods. |
| 52.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit. | Ditto ... | The expiry of the period of credit. |
| 53.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given. | Ditto ... | When the period of the proposed bill elapses. |
| 54.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon. | Ditto ... | The date of the sale. |

[a] See Act No. X of 1872, s. 2 and sched. v.

SECOND SCHEDULE—*continued.*

FIRST DIVISION : SUITS—continued.

| Description of suit. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | *Part VI.—Three years,*—contd. | |
| 55.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment. | Three years ... | When the work is done. |
| 56.—For money payable for money lent. | Ditto ... | When the loan is made. |
| 57.—Like suit when the lender has given a cheque for the money. | Ditto ... | When the cheque is paid. |
| 58.—For money lent under an agreement that it shall be payable on demand. | Ditto ... | When the demand is made. |
| 59.—For money payable to the plaintiff for money paid for the defendant. | Ditto ... | When the money is paid. |
| 60.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use. | Ditto ... | When the money is received. |
| 61.—For money payable for interest upon money due from the defendant to the plaintiff. | Ditto ... | When the interest becomes due. |
| 62.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them. | Ditto ... | When the accounts are stated, unless where the debt is made payable at a future time and then when that time arrives. |
| 63.—Upon a promise to do anything at a specified time, or upon the happening of a specified contingency. | Ditto ... | At the time specified or upon the contingency happening. |
| 64.—Against a factor for an account. | Ditto ... | When the account is demanded, or where no such demand is made, when the agency terminates. |
| 65.—On a single bond where a day is specified for payment. | Ditto ... | The day so specified. |

SECOND SCHEDULE—*continued.*

FIRST DIVISION: SUITS—continued.

| Description of suit. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | *Part VI.—Three years,*—contd. | |
| 66.—On a single bond where no such day is specified. | Three years ... | The date of executing the bond. |
| 67.—On a bond subject to a condition. | Ditto .. | When the condition is broken. |
| 68.—On a bill of exchange or promissory note payable at a fixed time after date. | Ditto ... | When the bill or note falls due. |
| 69.—On a bill of exchange payable at or after sight. | Ditto .. | When the bill is presented. |
| 70.—On a bill of exchange accepted payable at a particular place. | Ditto | When the bill is presented at that place. |
| 71.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand. | Ditto . | When the fixed time expires. |
| 72.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue. | Ditto .. | When the demand is made.[a] |
| 73.—By the endorsee of a bill or promissory note against the endorser. | Ditto .. | The date of the endorsement. |
| 74.—On a promissory note or bond payable by instalments. | Ditto ... | The expiration of the first term of payment, as to the part then payable; and, for the other parts, the expiration of the respective terms of payment. |
| 75.—On a promissory note or bond payable by instalments, which provides that if default be made in payment of one instalment the whole shall be due. | Ditto . | The time of the first default, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made.[b] |

[a] 10 Bomb. 487, 490.

[b] N. W. P. Rep 1874, pp 88, 91.

SECOND SCHEDULE—*continued.*

FIRST DIVISION: SUITS—continued.

| Description of suit. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | *Part VI.—Three years,*—contd. | |
| 76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen. | Three years ... | The time of the delivery to the payee. |
| 77.—On a dishonoured foreign bill where protest has been made and notice given. | Ditto ... | When the notice is given. |
| 78.—By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance. | Ditto ... | The date of the refusal to accept. |
| 79.—Like suit when the bill has been dishonoured by non-acceptance and afterwards by non-payment. | Ditto ... | Ditto. |
| 80.—Suit on a bill of exchange or promissory note not herein expressly provided for. | Ditto ... | When the bill or note becomes payable. |
| 81.—By the acceptor of an accommodation bill against the drawer. | Ditto ... | When the acceptor pays the amount. |
| 82.—By a surety against the principal debtor. | Ditto ... | When the surety pays the creditor. |
| 83.—By a surety against a co-surety. | Ditto ... | When the plaintiff pays anything in excess of his own share. |
| 84.—Upon any other contract to indemnify. | Ditto ... | When the plaintiff is actually damnified. |
| 85.—By an attorney or vakíl for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid. | Ditto ... | The termination of the suit or business, or (where the attorney or vakíl properly discontinues the suit or business) the date of such discontinuance. |

SECOND SCHEDULE—*continued.*

FIRST DIVISION: SUITS—continued.

| Description of suit. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | *Part VI.—Three years,*—contd. | |
| 86.—For compensation for damage caused by an injunction wrongfully obtained. | Three years ... | When the injunction ceases. |
| 87.—For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties. | Ditto ... | The time of the last item admitted or proved in the account. |
| 88.—On a policy of insurance when the sum assured is payable after proof of the death or loss has been given to or received by the insurers. | Ditto ... | When proof of the death or loss is given or received, to or by the insurers, whether by or from the plaintiff, or any other person. |
| 89.—By the assured to recover premia paid under a policy voidable at the election of the insurers. | Ditto ... | When the insurers elect to avoid the policy. |
| 90.—By a principal against his agent for moveable property received by the latter and not accounted for. | Ditto ... | When the account is demanded and refused. |
| 91.—Other suits by principals against agents for neglect or misconduct. | Ditto ... | When the neglect or misconduct occurs. |
| 92.—To cancel or set aside an instrument not otherwise provided for. | Ditto ... | When the instrument is executed. |
| 93.—To declare the forgery of an instrument issued, or registered, or attempted to be enforced. | Ditto ... | The date of the issue, registration, or attempt. |
| 94.—For property which the plaintiff has conveyed while insane. | Ditto ... | When the plaintiff is restored to sanity and has knowledge of the conveyance. |

SECOND SCHEDULE—*continued.*

FIRST DIVISION: SUITS—continued.

| Description of suit. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | *Part VI.—Three years,*—contd. | |
| 95.—For relief on the ground of fraud. | Three years ... | When the fraud becomes known to the party wronged. |
| 96.—To set aside a decree obtained by fraud. | Ditto ... | Ditto. |
| 97.—For relief on the ground of mistake in fact. | Ditto ... | When the mistake becomes known to the plaintiff. |
| 98.—For money paid upon an existing consideration which afterwards fails. | Ditto ... | The date of the failure. |
| 99.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust. | Ditto ... | The date of the trustee's death, or, if the loss has not then been occasioned, the date of the loss. |
| 100.—For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers. | Ditto ... | The date of the plaintiff's advance in excess of his own share. |
| 101.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution. | Ditto ... | When the right to contribution accrues. |
| 102.—For a seaman's wages ... | Ditto ... | The end of the voyage during which the wages are earned. |

SECOND SCHEDULE—*continued.*

FIRST DIVISION: SUITS—continued.

| Description of suit. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | *Part VI.—Three years,*—contd. | |
| 103.—By a Muhammadan for exigible dower (*mu'ajjal*). | Three years ... | When the dower is demanded and refused, or (where during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce. |
| 104.—By a Muhammadan for deferred dower (*mu'wajjal*). | Ditto ... | When the marriage is dissolved by death or divorce. |
| 105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee. | Ditto ... | The date of the receipt. |
| 106.—For an account and a share of the profits of a dissolved partnership. | Ditto ... | The date of the dissolution. |
| 107.—By a Hindú manager of a joint estate for contribution in respect of a payment made by him on account of the estate. | Ditto ... | The date of the payment. |
| 108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease. | Ditto ... | When the trees are cut down. |
| 109.—For the profits of immoveable property belonging to the plaintiff wrongfully received by the defendant. | Ditto ... | When the profits are received, or, where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, the date of the decree of the appellate Court. |
| 110.—For arrears of rent ... | Ditto ... | When the arrears become due. |

SECOND SCHEDULE—*continued.*

FIRST DIVISION: SUITS—continued.

| Description of suit. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | *Part VI.—Three years,*—concld. | |
| 111.—By a vendor of immoveable property to enforce his lien for unpaid purchase-money. | Three years ... | The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance. |
| 112.—For a call by a company registered under any Statute or Act. | Ditto ... | When the call is made. |
| 113.—For specific performance of a contract. | Ditto ... | When the plaintiff has notice that his right is denied. |
| 114.—For the rescission of a contract | Ditto ... | When the contract is executed by the plaintiff. |
| 115.—For the breach of any contract, express or implied, not in writing registered, and not herein specially provided for. | Ditto ... | When the contract is broken, or (where there are successive breaches) when the breach sued for occurs, or (where the breach is continuing) when it ceases. |
| | *Part VII.—Six years.* | |
| 116.—Upon a judgment obtained in a foreign country. | Six years ... | The date of the judgment. |
| 117.—On a promise or contract in writing registered. | Ditto ... | When the period of limitation would begin to run against a suit brought on a similar promise or contract not registered. |

SECOND SCHEDULE—*continued.*

FIRST DIVISION: SUITS—continued.

| Description of suit. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | *Part VII.—Six years,*—concld. | |
| 118.—Suit for which no period of limitation is provided elsewhere in this schedule. | Six years ... | When the right to sue accrues. |
| | *Part VIII.—Twelve years.* | |
| 119.—By an auction-purchaser or any one claiming under him to avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, the estate being, by virtue of such sale, freed from incumbrances and under-tenures. | Twelve years... | When the sale becomes final and conclusive. |
| 120.—To avoid incumbrances of under-tenures in a *patní táluq* or other saleable tenure sold for arrears of rent, the táluq or tenure being, by virtue of such sale, freed from incumbrances and under-tenures. | Ditto ... | When the sale becomes final and conclusive. |
| 121.—Upon a judgment obtained in British India, or a recognizance. | Ditto ... | The date of the judgment or recognizance. |
| 122.—For a legacy or for a distributive share of the moveable property of a testator or intestate. | Ditto ... | When the legacy or share becomes payable or deliverable. |
| 123.—For possession of an hereditary office. | Ditto ... | When the defendant, or some person through whom he claims, took possession of the office adversely to the plaintiff. |

SECOND SCHEDULE—*continued.*

FIRST DIVISION: SUITS—continued.

| Description of suit. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | *Part VIII.—Twelve years,*—continued. | |
| | | *Explanation.*—An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed. |
| 124.—Suit during the life of a Hindú widow by a Hindú entitled to the possession of land on her death to have an alienation made by the widow declared to be void except for her life. | Twelve years... | The date of the alienation. |
| 125.—By a Hindú governed by the law of the Mitákshará to set aside his father's alienation of ancestral property. | Ditto ... | The date of the alienation. |
| 126.—Like suit by a Hindú governed by the law of the Dáyabhága. | Ditto ... | When the father dies. |
| 127.—By a Hindú excluded from joint-family property to enforce right to share therein. | Ditto ... | When the plaintiff claims and is refused his share. |
| 128.—By a Hindú for maintenance... | Ditto ... | When the maintenance sued for is claimed and refused. |
| 129.—To establish or set aside an adoption. | Ditto ... | The date of the adoption, or (at the option of the plaintiff) the date of the death of the adoptive father.[a] |
| 130.—For the resumption or assessment of rent-free land. | Ditto ... | When the right to resume or assess the land first accrued: |

[a] This does not include 'mother', 22 Suth. C. R. 285.

SECOND SCHEDULE—*continued.*

FIRST DIVISION: SUITS—continued.

| Description of suit. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | *Part VIII.—Twelve years,*—continued. | Provided that no such suit shall be maintained where the land forms part of a permanently-settled estate, and has been held rent-free from the time of the Permanent Settlement. |
| 131.—To establish a periodically recurring right. | Twelve years... | When the plaintiff is first refused the enjoyment of the right. |
| 132.—For money charged upon immoveable property.<br>*Explanation.*—The allowance and fees called *málikána* and *haqqs* shall, for the purpose of this clause, be deemed to be money charged upon immoveable property. | Ditto ... | When the money sued for becomes due. |
| 133.—To recover moveable property conveyed in trust, deposited or pawned and afterwards bought from the trustee, depositary or pawnee, in good faith and for value. | Ditto . . | The date of the purchase. |
| 134.—To recover possession of immoveable property conveyed in trust or mortgaged and afterwards purchased from the trustee or mortgagee in good faith and for value. | Ditto | The date of the purchase. |
| 135.—Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged. | Ditto ... | When the mortgagee is first entitled to possession. |

SECOND SCHEDULE—*continued.*

FIRST DIVISION: SUITS—continued.

| Description of suit. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | *Part VIII.—Twelve years*—continued. | |
| 136.—By a purchaser at a private sale for possession of immoveable property sold, when the vendor was out of possession at the date of the sale. | Twelve years... | When the vendor is first entitled to possession. |
| 137.—Like suit by a purchaser at a sale in execution of a decree, when the execution-debtor was out of possession at the date of the sale. | Ditto ... | When the execution-debtor is first entitled to possession. |
| 138.—By a purchaser of land at a sale in execution of a decree, for possession of the purchased land, when he never has had possession. | Ditto ... | The date of the sale. |
| 139.—Like suit when the purchaser had possession, but was afterwards dispossessed. | Ditto ... | The date of the dispossession. |
| 140.—By a landlord to recover possession from a tenant. | Ditto ... | When the tenancy is determined. |
| 141.—By a remainderman, a reversioner (other than a landlord), or a devisee, for possession of immoveable property. | Ditto ... | When his estate falls into possession. |
| 142.—Like suit by a Hindú entitled to the possession of immoveable property on the death of a Hindú widow. | Ditto ... | When the widow dies. |
| 143.—For possession of immoveable property, when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession. | Ditto ... | The date of the dispossession or discontinuance. |
| 144.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition. | Ditto ... | When the forfeiture was incurred or the condition broken. |

SECOND SCHEDULE—*continued.*

FIRST DIVISION : SUITS—continued.

| Description of suit. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | *Part VIII.—Twelve years,*—concluded. | |
| 145.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for. | Twelve years... | When the possession of the defendant, or of some person through whom he claims, became adverse to the plaintiff. |
| 146.—For a declaration of right to an easement. | Ditto ... | When the easement ceased to be enjoyed by the plaintiff, or the persons on whose behalf he sues. |
| | *Part IX.—Thirty years.* | |
| 147.—Against a depositary or pawnee to recover moveable property deposited or pawned. | Thirty years ... | The date of the deposit or pawn, unless where an acknowledgment of the title of the depositor or pawnor, or of his right of redemption, has before the expiration of the prescribed period been made in writing, signed by the depositary or pawnee, or some person claiming under him, and, in such case, the date of the acknowledgment. |

SECOND SCHEDULE—*continued.*

FIRST DIVISION: SUITS—continued.

| Description of suit. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | *Part X.—Sixty years.* | |
| 148.—Against a mortgagee to recover possession of immoveable property mortgaged. | Sixty years ... | The date of the mortgage, unless where an acknowledgment of the title of the mortgagor or of his right of redemption has, before the expiration of the prescribed period, been made in writing signed by the mortgagee or some person claiming under him, and, in such case, the date of the acknowledgment: Provided that all claims to redeem, arising under instruments of mortgage of immoveable property situate in British Burma, which have been executed before the first day of May 1863, shall be governed by the rule of limitation in force in that province immediately before the same day. |
| 149.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged. | Ditto ... | When any part of the principal or interest was last paid on account of the mortgage debt. |

## SECOND SCHEDULE—*continued.*

### FIRST DIVISION: SUITS—concluded.

| Description of suit. | Period of limitation. | Time when period begins to runs. |
|---|---|---|
| | *Part X.—Sixty years,*—concld. | |
| 150.—Any suit in the name of the Secretary of State for India in Council. | Sixty years ... | When the right to sue accrued. |

### SECOND DIVISION: APPEALS.

| Description of appeals. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| 151.—Under the Code of Civil Procedure to the Court of a District Judge. | Thirty days ... | The date of the decree appealed against. |
| 152.—Under the Code of Criminal Procedure to any Court other than the High Court. | Ditto ... | The date of the sentence or order appealed against. |
| 153.—Under the same Code to the High Court.[a] | Sixty days ... | Ditto. |
| 154.—Under the Code of Civil Procedure to the High Court.[b] | Ninety days ... | The date of the decree appealed against. |

### THIRD DIVISION: APPLICATIONS.

| Description of application. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| 155.—Under the Code of Civil Procedure to set aside an award. | Ten days ... | When the award is submitted to the Court, and notice of the submission has been given to the persons and in manner prescribed by the High Court. |

[a] See the Burma Courts Act (XVII of 1875), ss. 37, 83.
[b] See the same Act, ss. 37, 65, 85.

SECOND SCHEDULE—*continued.*

THIRD DIVISION: APPLICATIONS—continued.

| Description of application. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| 156.—By a plaintiff for an order to set aside a judgment by default. | Thirty days ... | The date of the judgment. |
| 157.—By a defendant for an order to set aside a judgment *ex parte.* | Ditto ... | The date of executing any process for enforcing the judgment. |
| 158.—Under the Code of Civil Procedure, by a person dispossessed of immoveable property, and disputing the right of the decree-holder to be put into possession. | Ditto .. | The date of the dispossession. |
| 159.—To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale. | Ditto ... | The date of the sale. |
| 160.—Complaining of resistance or obstruction to delivery of possession of immoveable property sold in execution of a decree, or of dispossession in the delivery of possession to the purchaser of such property. | Ditto ... | The date of the resistance, obstruction, or dispossession. |
| 161.—For re-admission of an appeal dismissed for want of prosecution. | Ditto ... | The date of the dismissal. |
| 162.—For leave to appeal as a pauper | Ninety days ... | The date of the decree appealed against. |
| 163.—To a High Court for the admission of a special appeal. | Ditto ... | Ditto. |
| 164.—For a review of judgment ... | Ditto ... | The date of the decree. |
| 165.—Under the Code of Civil Procedure, section three hundred and twenty-seven, that an award be filed in Court. | Six months ... | The date of the award. |
| 166.—For the execution of a decision (other than a decree or order passed in a regular suit or an appeal)[a] of a Civil Court or of a Revenue Court. | One year ... | The date of the decision or of taking some proceeding to enforce or keep in force the decision. |

[a] I. L. R. 1 Bomb. 22.

SECOND SCHEDULE—*continued.*

THIRD DIVISION: APPLICATIONS—continued.

| Description of application. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| 167.—For the execution of a decree or order of any Civil Court not provided for by No. 169. | Three years ... | The date of the decree or order, or (where there has been an appeal) the date of the final decree or order of the Appellate Court, or (where there has been a review of judgment) the date of the decision passed on the review, or (where the application next hereinafter mentioned has been made) the date of applying to the Court[a] to enforce, or keep in force, the decree or order, or (where the notice next hereinafter made[b] has been issued) the date of issuing a notice under the Code of Civil Procedure, section two hundred and sixteen, or (where the application is to enforce payment of an instalment which the decree directs to be paid at a specified date) the date so specified. |
| 168.—For the execution of any such decree or order of which a certified copy has been registered under the Indian Registration Act. | Six years ... | The date of the decree or order, or (where there has been an appeal) the date of the final de- |

[a] 21 Suth. C. R., 410.

[b] *Sic.* Read 'mentioned.'

SECOND SCHEDULE—*concluded.*

THIRD DIVISION: APPLICATIONS—concluded.

| Description of application. | Period of limitation. | Time when period begins to run. |
|---|---|---|
| | | cree or order of the Appellate Court, or (where there has been a review of judgment) the date of the decision passed on the review. |
| 169.—To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction. | Twelve years... | When a present right to enforce the judgment, decree or order accrued to some person capable of releasing the right: Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment, or the latest of such revivors, payments or acknowledgments, as the case may be. |

# INDEX.

*Nothing hereinafter contained shall be deemed to have the force of law.*

NOTE.—The numbers to which 'No.' or 'Nos.' is prefixed refer to the articles in the second schedule.

Absence of defendant from British India, sec. 14.
Accommodation-acceptor, suit by, No. 81.
Account, suit against a factor for an, No. 64.
See *Partnership.*
Account current, suit for balance due on mutual and open, No. 87.
Account stated, suit for money found due on, No. 62.
Acknowledgment in writing, effect of, sec. 20.
by one of several persons chargeable, sec. 20, expl. (2).
of title of depositor or pawnor, No. 147.
of title of mortgagor, No. 148.
of right to money secured by judgment, No 169.
Act in pursuance of enactment, suit for doing or omitting to do, No. 2.
Act XVI of 1838, No. 46.
Act XII of 1855, suit under, Nos. 12, 39.
Act XIII of 1855, suit under, No. 13.
Act VIII of 1859,—see *Civil Procedure Code.*
Act XIV of 1859, sec. 15, suit under, No. 3.
Act IX of 1860, sec. 1, suit under, No. 4.
Act XXV of 1861, cap. 22, No. 46.
Act XXIII of 1863, suit to contest award under, No. 1.
Act V of 1866, suit under, No. 5.
Acts repealed, sec. 2 and sched. I.
Addition of defendant, sec. 22.
Administrator to estate of his creditor, sec. 9.
suit by, for wrong to intestate, No. 12.
suit by, for death caused by actionable wrong, No. 13.
suit against, for wrong done by intestate, No. 39.
See *Representative.*
Admission, after time, of appeal or application for review, sec. 5, cl. (*b*).
of liability, sec. 20, expl.
of special appeal, application for, No. 163.
Adoption, suit to establish or set aside an, No. 129.
Adverse possession of an hereditary office, No. 123.
of immoveable property, No. 145.
Advertisement to creditors insufficient to take debt out of operation of Act, sec. 20, ill.
Agent may sign promise or acknowledgment taking debt out of Act, sec. 20.

Agent may pay interest or principal taking debt out of Act, sec. 21.
of judgment-debtor in Charter Court, acknowledgment by, No. 169.
of judgment-creditor in Charter Court, acknowledgment to, *ib.*
See *Factor, Principal.*
Air, prescriptive title to access and use of, sec. 27.
Ancestral property, suit to set aside alienation of, Nos. 125, 126.
Animals, suit for hire of, No. 49.
Appeal presented after time, sec. 4; sec. 5, cl. (*b*).
in Non-Regulation Province, sec. 6.
from decree of High Court on original side, *ib.*
on ground of want of jurisdiction, sec. 15, exp. 2.
to Court of District Judge, No. 151.
under Criminal Procedure Code to any Court other than High Court, No. 152.
to High Court, under Criminal Procedure Code, No. 153.
under Civil Procedure Code, No. 154.
See *Application.*
Application presented after time, sec. 4.
for review of judgment, sec. 5, cl. (*b*); sec. 13.
to review decrees, &c., of High Court on original side, sec. 6.
to set aside an award, sec. 13 and No. 155.
for order to set aside judgment by default, No. 156.
for order to set aside judgment *ex parte*, No. 157.
under Code of Civil Procedure, sec. 230, No. 158.
to set aside an execution-sale, No. 159.
complaining of resistance, &c., to delivery of possession of land sold in execution, or of dispossession, No. 160.
for re-admission of an appeal, No. 161.
for leave to appeal as a pauper, sec. 13, No. 162.
to High Court for admission of special appeal, sec. 13, No. 163.
for review of judgment, sec. 5, cl. (*b*), No. 164.
that an award be filed in Court, No. 165.
for execution of a decision (not a decree) of a Civil Court, No. 166.
for execution of a decree, No. 167.
for execution of a registered decree, No. 168.
to enforce judgment of Charter Court, No. 169.
Arrears of rent, suit to set aside sale of patní táluq for, No. 14 (*d*).
*málikáná*, suit for, No. 132.
revenue, suit to set aside sale for, No. 14 (*c*).
suit to set aside attachment, lease, or transfer of land for, No. 17.
suit for money paid under protest in satisfaction of claim for, No. 18.
Artisan,—see *Wages.*
Assessment of rent-free land, suit for, No. 130.
Attachment of land for arrears of revenue, suit to set aside, No. 17.
Attorney, his suit for costs, No. 85.
Auction purchaser, suit by, to avoid incumbrances on estate sold for revenue arrears, No. 119.

Averment in acknowledgment that time for payment has not come, sec. 20, exp. 1.
Award under Claims to Waste Land Act, suit to contest, No. 1.
application to set aside, No. 155.
application to file in Court an, No. 165.
made under certain Bengal Regulations, suit to contest, No. 44.
suit to recover property comprised therein, No. 45.
Balance of advance in payment of goods to be delivered, suit for, No. 50.
due on mutual, open and current account, suit for, No. 87.
Bar, limitation set up as a, sec. 20, exp. 1.
Benámidár not a 'trustee,' sec. 3.
Bill of exchange includes a hundí, *ib.* .
suit on, under Act V of 1866, No. 5.
suit for price of goods to be paid for by, No. 53.
payable a fixed time after date, No. 68.
payable at or after sight, No. 69.
accepted payable at a particular place, No. 70.
payable at a fixed time after sight or demand, No. 71.
payable on demand, No. 72.
by endorsee of, No. 73.
suit on a dishonoured foreign, No. 77.
dishonoured by non-acceptance, No. 78.
non-acceptance and non-payment, No. 79.
not expressly provided for, No. 80.
suit by accommodation-acceptor against drawer of, No. 81.
Board and lodging, suit for, Nos. 8 and 9.
Boats, suit for hire of, No. 49.
*Boná fides*,—see *Good faith.*
Bond, suit on a single, Nos. 65, 66.
subject to condition, suit on, No. 67.
payable by instalments, suit on, Nos. 74, 75.
Breach of contract, suit for, sec. 23, No. 115.
where contract is registered, No. 117.
trust, No. 99.
British India, defendant's absence from, sec. 14.
suits in, on foreign contracts, sec. 11.
Byelaw, suit for penalty under, No. 6.
Calendar, Gregorian, sec. 26.
Call,—see *Company.*
Cancellation of instrument, suit for, No. 92.
Carrier losing or injuring goods, suit against, No. 36.
delaying delivery of goods, suit against, No. 37.
Charter Court, appeal to, under Criminal Procedure Code, No. 152.
under Civil Procedure Code, No. 154.
application for execution of decree or order of, Nos. 167, 168.
of other decisions of, No. 166.
to enforce judgment of, in original jurisdiction, No. 169.
redemption suit in, No. 148.
foreclosure suit in, No. 149.

Cheque, suit for money lent by, No. 57.
Civil Procedure Code, sec. 60, sec. 14.
sec. 119, Nos. 156, 157.
sec. 230, No. 158.
sec. 256, No. 159.
sec. 269, No. 160.
sec. 324, No. 155.
sec. 327, No. 165.
sec. 333, No. 154.
sec. 347, No. 161.
sec. 373, Nos. 162, 163.
repeal of parts of, sec. 2, sched. I.
Claim against a company being wound up by Court, sec. 4, exp.
to a set-off, sec. 20, exp. 1.
under Act IX of 1860, No. 4.
Claimant, disability of joint, sec. 8.
in good faith and for value through fraudulent person, sec. 19 (*b*).
Closing of Court, effect of, sec. 5, cl. (*a*).
Collector, suit to set aside sale by, No. 14 (*b*).
See *Officer*.
Commencement of Act, sec. 1.
of suit stayed by injunction, sec. 16.
Company wound up by Court, when claim against, instituted, sec. 4, exp.
suit for call by registered, No. 112.
Compensation for lawful act becoming unlawful, suit for, sec. 25.
for land taken for public purposes, suit for, Nos. 19, 20.
for wrong independent of contract, No. 40.
Conjugal rights, suit for, No. 42.
Consideration, suit for money paid on failing, No. 98.
See *Valuable Consideration*.
Contingency, suit on promise to do anything on happening of specified, No. 63.
Continuance of injunction, exclusion of time of, sec. 16.
Continuing breaches of contract, sec. 23.
nusance, sec. 24.
Contract, suit on foreign, sec. 11.
suit for breach of, where there are successive breaches, sec. 23.
where the breach is continuing, *ib.*
suit for inducing a person to break, No. 28.
to indemnify, suit on, Nos. 80—84.
suit for specific performance of, No. 113.
rescission of, No. 114.
revision of,—see *Fraud, Mistake*.
breach of unregistered, No. 115.
Contract in writing registered, suit on, No. 117.
See *Account, Animals, Attorney, Balance, Bill of Exchange, Board and Lodging, Boats, Bond, Consideration, Continuing breaches, Contribution, Costs, Co-surety, Co-trustee, Creditor, Debt, Demand, Depositary, Extinction, Factor, Foreign contracts, Furniture, Goods, Growing crops, Hire, Indemnity, Lodging, Money, Mortgagee,*

*Partnership, Pawnee, Policy, Pre-emption, Premia, Price, Principal, Promise, Promissory note, Rent, Sales, Seaman's wages, Surety, Tavern Bill, Trees, Vakil, Vendor's lien, Wages.*
Contribution when plaintiff pays whole amount due under a joint decree, No. 100.
when he pays whole amount of revenue due from himself and his co-sharers, *ib.*
claim for, against estate of deceased co-trustee, No. 101.
in respect of payment by Hindú manager on account of joint estate, No. 107.
Copy of decree, sentence, order or award, exclusion of time requisite for obtaining, sec. 13.
Copyright, suit for infringing, No. 11.
Costs, suit for, No. 85.
Co-surety, suit against, No. 83.
Co-trustee, suit against, No. 101.
Court,—see *Appeal, Application, Award, Charter-Court, Claim, Closing, Day, Diligence, High Court, Order, Revenue Court, Summary decisions.*
Credit, fixed period of, No. 52.
Creditor, disability of joint, sec. 8.
See *Administrator, Advertisement, Agent.*
Criminal Procedure Code, appeal to High Court under, No. 153.
appeal to any other Court under, No. 152.
Crops,—see *Growing crops.*
Damage, suit for act becoming unlawful on causing, sec. 25.
Damaging moveables, suit for, No. 26.
Date of acknowledgment or promise, sec. 20, cl. (*c*).
Daughter,—see *Service.*
Day on which closed court re-opens, sec. 5, cl. (*a*).
on which right to sue accrues excluded, sec. 13.
on which judgment complained of was pronounced excluded, *ib.*
on which former suit in wrong court was instituted, sec. 15, exp. 1.
on which such suit was ended, *ib.*, exp. 1.
Dáyabhága, suit by Hindú under law of, No. 126.
Death of person under disability, sec. 7.
of person who, if living, would have a right to sue, sec. 18.
of person against whom, if living, right to sue would have accrued, sec. 18.
of original plaintiff, sec. 22.
of original defendant, *ib.*
caused by actionable wrong, suit for, No. 13.
Debt, acknowledgment of, or promise to pay, sec. 20.
payment of interest on, sec. 21.
See *Part payment.*
Debtor,—see *Agent.*
Decision in any proceeding not a suit, suit to set aside, No. 15.
Decree,—see *Application, Charter Court, Fraud, Instalments.*
Default, application to set aside judgment by, No. 156.
Defence, limitation need not be set up as a, sec. 4.
foreign rule of limitation not a, sec. 12,—see *Extinction.*

Defendant, effect of his absence from British India, sec. 14.
effect of adding, sec. 22.
death of original, *ib.*
adverse possession by, Nos. 123, 145.
Delay in delivering, suit against carrier for, No. 37.
Demand, suit for money payable on, No. 58.
suit on bill or note payable at a fixed time after, No. 71.
payable on, No. 72.
Depositary, suit against *bonâ fide* purchaser from, No. 133.
suit against, No. 147.
Destruction of written acknowledgment, sec. 20 *c.*
Detinue, Nos. 33, 34.
Devisee, his suit for possession of immoveable property, No. 141.
Diligence, suing in wrong court with due, sec. 15.
Disability, legal, sec. 7.
of one joint-creditor or claimant, sec. 8.
subsequent to time beginning to run, sec. 9.
Discontinuance of possession, No. 143.
Dismissal of suits instituted after period, sec. 4.
of appeals and applications presented and made after period, *ib.*, but see sec. 5, cl. (*b*).
Dispossession of purchaser at execution-sale, No. 139.
of plaintiff, No. 143.
Distress, suit for illegal, irregular, or excessive, No. 29.
District Judge,—see *Appeal.*
Diverting watercourse, suit for, sec. 24, ill., No. 32.
Divorce Act, this Act does not apply to suits under, sec. 1, cl. (*b*).
Document, effect of fraudulently concealing, sec. 19.
Domestic servant,—see *Wages.*
Dower, suit by Muhammadan for exigible, No. 103.
deferred, No. 104.
Drawer,—see *Bill of Exchange.*
Drink supplied by hotel-keeper, suit for, No. 8.
Easement, acquisition of right to, secs. 27, 28.
declaration of right to, No. 146.
See *Air, Light, Resistance, Watercourse, Way.*
Enactments, suits for doing or omitting acts in pursuance of, No. 2.
Endorsee,—see *Promissory note.*
Enforcement of forged instrument, No. 93.
Evidence,—see *Oral evidence, Presumption.*
Exclusion of day on which right to sue accrued, sec. 13.
of day on which judgment complained of was pronounced, *ib.*
of time requisite for obtaining copy of decree appealed against, *ib.*
of time requisite for obtaining copy of award, sec. 13.
of time of defendant's absence from British India, sec. 14.
of time of suing *bonâ fide* in court without jurisdiction, sec. 15.
of time during which commencement of suit has been stayed by injunction, sec. 16.
of time during which judgment-debtor sues to set aside execution-sale, sec. 17.

Exclusive privilege, damages for infringing, No. 11.
Execution,—see *Application.*
Execution-sale, exclusion of time during which judgment-debtor sues to set aside, sec. 17.
application to set aside, No. 159.
suit to set aside, sec. 17.
suit for possession by purchaser at, Nos. 137, 138, 139.
Executor, acknowledgment or promise by one, sec. 20, expl. 2.
suit by, for wrong to testator, No. 12.
suit by, for death caused by actionable wrong, No. 13.
suit against, for wrong done by testator, No. 39.
*Ex parte* judgment, application for order to set aside, No. 157.
Expiry of period of limitation when court is closed, sec. 5, cl. (*a*).
Extinction of contract by foreign limitation law, sec. 12.
of right to land or hereditary office, sec. 29.
Factor, suit against, for an account, No. 64.
Failing consideration, suit for money paid on, No. 98.
False imprisonment, suit for, No. 21.
Food supplied by hotel-keeper, &c., suit for, No. 8.
Foreclosure suit,—see *Mortgagee.*
Foreign country defined, sec. 3.
suits on contracts entered into in, secs. 11, 12.
Foreign contract, suit on, sec. 11.
limitation law, sec. 12.
bill, suit on dishonoured, No. 77.
judgment, suit on, No. 116.
Forfeiture, suit for, No. 6.
Forgery,—see *Instrument.*
Fraud, effect of, sec. 19.
suit for relief on ground of, No. 95.
suit to set aside decree obtained by, No. 96.
Furniture, suit for hire of household, No. 49.
Good faith defined, sec. 3.
effect of suing in wrong court in, sec. 15.
claimant through fraudulent person in, sec. 19 (*b*).
purchase of moveables from trustee, &c., in, No. 133.
purchase of immoveables from trustee or mortgagee in, No. 134.
Goods to be delivered, suit for balance of advance in payment of, No. 50.
sold and delivered, suit for price of, No. 51.
to be paid for after a fixed time, suit for price of, No. 52.
by a bill, suit for price of, No. 53.
See *Moveable property.*
Government, suits against, Nos. 17, 18, 19, 20.
See *Revenue, Secretary of State for India in Council.*
Gregorian calendar, time computed according to, sec. 26.
Growing crops, suit for price of, No. 54.
*Haqq*, suit for, No. 132, expl.
Hereditary office, suit under Madras Reg. VI of 1831 for, not affected by this Act, sec. 1, cl. (*c*).

Hereditary office, extinguishment of right to, sec. 29.
suit for, No. 123.
High Court,—see *Appeal, Charter Court, Interest, Judgment-creditor, Judgment-debtor, Mortgagee, Part payment.*
Hindú entitled on widow's death, suit by, No. 142.
suit by, to set aside alienation of ancestral property, Nos. 125, 126.
excluded from joint-family property, suit by, No. 127.
suit by, for maintenance, No. 128.
to establish or set aside an adoption, No. 129.
Hindú manager, his suit for contribution, No. 107.
Hindú widow, suit to have her alienation declared void, No. 124.
Hire, suit for, under Act IX of 1860, No. 4.
of animals, &c., suit for, No. 49.
Household furniture, suit for hire of, No. 49.
Hundí included in 'Bill of Exchange,' sec. 3.
Husband,—see *Conjugal rights, Wife.*
Idiocy of person having a right to sue, sec. 7.
Immoveable property, trespass on, No. 43.
taken for public purposes, suit against Government for compensation for, Nos. 19, 20.
purchased from mortgagee, suit for possession of, No. 134.
suit for, when plaintiff has been dispossessed or has discontinued possession, No. 143.
suit for, when plaintiff has become entitled by forfeiture or breach of condition, No. 144.
suit for, money charged upon, or payable out of, No. 132.
suit for, not otherwise provided for, No. 145.
See *Improvement, Incumbrances, Mesne profits, Mortgagee, Possession, Rent-free land.*
Imprisonment,—see *False imprisonment.*
Inability to sue subsequent to time beginning to run, sec. 9.
Incumbrances on an estate sold for revenue arrears, suit to avoid, No. 119.
on a patní táluq, No. 120.
Indemnity, suit on contract of, No. 84.
Infringement of copyright, suit for, No. 11.
Injunction, staying commencement of suit by, sec. 16.
damages caused by wrongfully obtaining, No. 86.
Injury to person, suit for, No. 22.
to goods, No. 26.
suit against carrier for, No. 36.
Insanity of person to whom right to sue accrues, sec. 7.
suit for property conveyed during, No. 94.
Instalments, failure to pay, sec. 23, ill. (*a*).
contract for payment by, where whole becomes due on default in one, sec. 23.
decree directing payment to be made by, No. 167.
See *Bond, Promissory note.*
Institution of suit, sec. 4, expl.
Instrument, suit to cancel or set aside an, No. 92.

Instrument, suit to declare forgery of an, No. 93.
See *Calendar.*
Insurer,—see *Policy, Premia.*
Interest on debt or legacy, effect of paying, sec. 21.
suit for, No. 61.
on High Court judgment-debt, effect of paying, No. 169.
Interpretation-clause, sec. 3.
Interruption defined, sec. 27, expl.
Issue of forged instrument, No. 93.
Joint creditor or claimant, disability of a, sec. 8.
Judgment by default, application to set aside, No. 156.
Judgment *ex parte*, application to set aside, No. 157.
application for review of, sec. 5, cl. (*b*), No. 164.
foreign, suit on, No. 116.
obtained in British India, suit on, No. 121.
of Charter Court, application to enforce, 169.
Judgment-creditor in High Court, acknowledgment to, No. 169.
Judgment-debtor, effect of suit by, to set aside execution-sale, sec. 17.
in High Court, acknowledgment by, No. 169.
Jurisdiction,—see *Appeal.*
Labourer,—see *Wages.*
Lákhíráj,—see *Rent-free land.*
Land, extinguishment of right to, sec. 29.
See *Immoveable property.*
Landlord, his suit to recover possession, No. 140.
See *Trees.*
Lease for arrears of revenue, suit to set aside, No. 17.
Legacy, acknowledgment of, or promise to pay, sec. 20.
payment of interest on, sec. 21.
suit for, No. 122.
Legal disability, effect of, sec. 7.
continuing till death, *ib.*
process, suit for wrongful seizure of moveables under, No. 30.
Lessor,—see *Landlord, Lease, Trees.*
Libel, suit for, No. 24.
Lien,—see *Vendor's lien.*
Light, prescriptive title to access and use of, sec. 27,—see *Easement.*
Limitation, dismissal of suits instituted after period of, sec. 4.
need not be pleaded, *ib.*
saving of local laws prescribing different period of, sec. 6.
applicable to suits on foreign contracts, sec. 11.
foreign rules of, sec. 12.
Loan,—see *Money lent.*
Local extent, sec. 1.
laws, saving of periods of limitation prescribed by, sec. 6.
Lodging, suit for price of, No. 9.
Losing goods, suit against carrier for, No. 36.
Loss of written acknowledgment, sec. 20, cl. (*c*).
of service by seduction, suit for, No. 27.
of goods by carrier, suit for, No. 36.

Lost property, suit for, No. 47.
Lunatic,—see *Insanity*.
Magistrate,—see *Officer*.
Maintenance, suit for, No. 128.
Maker,—see *Promissory note*.
Malfeasance independent of contract, suit for, No. 40.
Malicious prosecution, suit for, No. 23.
*Málikána*, suit for, No. 132.
Manager,—see *Hindú manager*.
Mesne profits, suit for, No. 109.
'Minor' defined, sec. 8.
Minority of person having right to sue, sec. 7.
Misconduct, suit by principal against agent for, No. 91.
Misfeasance independent of contract, suit for, No. 40.
Mistake in fact, suit for relief on ground of, No. 97.
Mitákshará, suit by Hindú under law of, No. 125.
Money lent, suit for, No. 56.
when lender gave cheque, suit for, No. 57.
under agreement that it should be payable on demand, suit for, No. 58.
paid for defendant, suit for, No. 59.
received for plaintiff's use, suit for, No. 60.
payable for interest, suit for, No. 61.
found due on accounts stated, suit for, No. 62.
paid on failing consideration, suit for, No. 98.
charged upon or payable out of land, suit for, No. 132.
Mortgagee remaining in possession after mortgage satisfied, not a 'trustee,' sec. 3.
suit for surplus collections received by satisfied, No. 105.
suit to recover land purchased from, No. 134.
suit by, in Mofussil Court, for possession of land, No. 135.
suit against, to recover land mortgaged to, No. 148.
suit in High Court by, for land mortgaged to, No. 149.
Mortgagor, suit by, No. 148.
Moveable property, suit for taking or damaging, No. 26.
for wrongfully seizing under legal process, No. 30.
for wrongfully detaining, No. 34.
for specific recovery of, No. 35.
for lost, No. 47.
for stolen, No. 48.
by principal against agent for, No. 90.
See *Depositary, Goods, Money, Pawnee, Title-deeds, Trustee*.
*Mu'ajjal*,—see *Dower*.
Muhammadan,—see *Dower, Pre-emption*.
*Mu'wajjal*,—see *Dower*.
Native instruments, computation of time mentioned in, sec. 26.
Neglect, suit by principal against agent for, No. 91.
Nonfeasance independent of contract, suit for, No. 40.
'Nusance' defined, sec. 3.
suit for a continuing, sec. 24.
See *Watercourse, Way*.

Office,—see *Hereditary office.*
Officer of Government, suit to set aside act of, No. 16.
of Revenue,—see *Collector.*
Official Liquidator, claim sent in to, sec. 4, expl.
Omission in acknowledgment to specify exact amount of debt, sec. 20, expl. 1.
to do an act in pursuance of an enactment, suit for, No. 2.
Oral evidence of date of acknowledgment, sec. 20, cl. *(c).*
not of contents of lost or destroyed acknowledgment, *ib.*
Order in any proceeding not a suit, suit to set aside, No. 15.
under Act XVI of 1838, sec. 1, cl. 2, Act XXV of 1861, cap. 22, or Bom. Act V of 1864, suit to recover property comprised in, No. 46.
of Civil Court, application for execution of, Nos. 167, 168, 169.
Partner, acknowledgment or promise by one, sec. 20, expl. 2.
Partnership, suit for account and share of profits of dissolved, No. 106.
Part-payment when it takes debt out of operation of Act, sec. 21.
in case of High Court judgment-debt, No. 169.
Patent,—see *Privilege.*
'Patní' defined, No. 14, exp.
Patní táluq, suit to set aside sale of, No. 14 *(d).*
sold for arrears of rent, suit to avoid incumbrances on, No. 120.
Pauper, suit when instituted by, sec. 4, exp.
See *Application.*
Pawnee, suit against, No. 147.
suit against purchaser from, No. 133.
Payee of bill, his suit against drawer, Nos. 78 and 79.
Payment,—see *Interest, Part-payment, Refusal.*
Penalty, suit for, No. 6.
Periodical right, suit to establish, No. 131.
Permanent settlement, No. 130.
Person, suit for injury to, No. 22.
See *False imprisonment.*
Perversion of property to unauthorised uses, suit for, No. 38.
Place, suit on a bill payable at a particular, No. 70.
'Plaintiff' defined, sec. 3.
effect of substituting new, sec. 22.
suit for seduction of daughter or servant of, No. 27.
suit for inducing a person to break a contract with, No. 28.
suit for price of trees or growing crops sold by, No. 54.
suit for price of work done by, No. 55.
suit for money payable to, Nos. 59, 60, 61, 62.
suit for property conveyed by insane, No. 94.
mistake in fact by, No. 97.
suit for contribution in respect of advance by, No. 100.
suit for profits of land belonging to, No. 109.
denied right to specific performance, No. 113.
suing to rescind contract, No. 114.
denied enjoyment of recurring right, No. 131.
possession becoming adverse to, Nos. 123, 145.
Policy of insurance, suit on, No. 88.

Policy of insurance, voidable at insurer's election, suit to recover premia paid under, No. 89.
Possession of land, suit for, by purchaser at execution-sale, sec. 17.
suit for, under Act XIV of 1859, sec. 15, No. 3.
mortgagee's suit for, No. 135.
private purchaser's suit for, No. 136.
execution-purchaser's suit for, Nos. 137, 138, 139.
landlord's suit for, No. 140.
suit by remainderman, reversioner, or devisee for, No. 141.
suit by a Hindú entitled on death of widow, No. 142.
by one who has been dispossessed or has discontinued possession, No. 143.
by one entitled by reason of forfeiture or breach of condition, No. 144.
other suits for, No. 145.
Pre-emption, suit to enforce right of, No. 10.
Premia paid under voidable policy, suit for, No. 89.
Prescription, title by, sec. 27.
Presentation,—see *Appeal.*
Price of work under Act IX of 1860, suit for, No. 4.
goods sold and delivered, suit for, Nos. 51, 52, 53.
trees or growing crops, No. 54.
work done, suit for, No. 55.
Principal debtor, suit by surety against, No. 82.
against agent, suit by, Nos. 90, 91.
Privilege, suit for infringing exclusive, No. 11.
Profits of dissolved partnership, suit for, No. 106.
suit for mesne, No. 109.
Promise in writing, effect of, sec. 20.
to do anything at or on a specified time or contingency, suit on, No. 63.
in writing registered, suit on, No. 117.
Promissory note payable at fixed time after date, No. 68.
sight or demand, No. 71.
on demand, No. 72.
suit by endorsee against endorser of, No. 73.
payable by instalments, suit on, sec. 23, ill., Nos. 74, 75.
given by maker to third person to be delivered to payee on certain event, suit on, No. 76.
Property comprised in order under Act XVI of 1838, sec. 1, or Act XXV of 1861, cap. 22, suit to recover, No. 46.
conveyed by plaintiff while insane, suit for, No. 94.
See *Immoveable property, Moveable property, Slander.*
Prosecution,—see *Malicious prosecution.*
Protest, suit against Government to recover money paid under, No. 18.
of foreign bill, No. 77.
Public Works,—see *Wages.*
Purchaser of moveables from trustee, depositary or pawnee, No. 133.
at a private sale of land, suit by, for possession, No. 136.
at an execution-sale of land, suit by, for possession, Nos. 137, 138, 139.

Reciprocal demands, No. 87.
Recognizance, suit on, No. 121.
Recurring right, suit to establish, No. 131.
Redemption, acknowledgment of right of, Nos. 147, 148.
See *Mortgagor.*
Refusal to pay, acknowledgment accompanied by, sec. 20, expl. (1).
to complete acquisition of land for public purposes, No. 20.
of a wife, No. 41.
of restitution of conjugal rights, No. 42.
of lost or stolen moveables, Nos. 47, 48.
of account by agent, No. 90.
of share of joint-family property, No. 127.
of maintenance, No. 128.
of enjoyment of recurring right, No. 131.
'Registered' defined, sec. 3.
appeal, sec. 4, ill. (*b*).
instrument, suit to declare forgery of, No. 93.
suit for breach of contract not, No. 115.
promise or contract in writing, suit on, No. 117.
decree or order, application for execution of, No. 168.
See *Company.*
Regulation VI of 1831 (Madras), suits under, sec. 1, cl. (*c*).
Regulations, suit to contest award under certain Bengal, No. 44.
Relief,—see *Fraud, Mistake.*
Remainderman, suit by, No. 141.
Rent, suit to set aside sale of patní táluq sold for arrears of, No. 14, cl. (*d*).
suit for arrears of, No. 110.
Rent-charge, suit for, No. 132.
Rent-free land, suit for resumption or assessment of, No. 130.
Repeal of enactments, sec. 2, sched. I.
Representative of person whose disability continues up to death, sec. 7.
of express trustee, sec. 10.
of deceased, sec. 18.
of deceased plaintiff, sec. 22.
of deceased defendant, sec. *ib.*
his suit for wrong done to deceased, No. 12.
his suit for death caused by actionable wrong, No. 13.
suit against, for wrong done by deceased, No. 39.
See *Administrator, Executor.*
Rescission of contract, suit for, No. 114.
Resistance to claim of easement, sec. 28.
Resumption,—see *Rent-free land.*
Revenue, suit to set aside sale by officer of, No. 14, cl. (*b*).
suit to set aside sale for arrears of, *ib.*, cl. (*c*).
suit to set aside attachment, lease or transfer of land for arrears of, No. 17.
See *Contribution.*
Revenue Court, application for execution of summary decision of, No. 166.
Reversioner of servient tenement, exclusion in favour of, sec. 28.
suit by, No. 141.

Review of judgment,—see *Application.*
Revivor of judgment of High Court, No. 169.
Right,—see *Easement, Pre-emption, Redemption.*
Sales in execution of decrees, application to set aside for irregularity, No. 159.
suits to set aside certain, No. 14.
See *Purchaser, Rent, Vendor's lien.*
Sealed acknowledgment insufficient, sec. 20, ill.
Seaman's wages, suit for, No. 102.
Secretary of State for India in Council, suit in name of, No. 150.
See *Government.*
Seduction,—see *Service.*
Servant,—see *Service, Wages.*
Service of summons on absent defendant, effect of, sec. 14.
suit for loss of, caused by seduction of plaintiff's daughter or servant, No. 27.
Servient tenement, exclusion in favour of reversioner of, sec. 28.
Setting aside instruments, suits for, No. 92.
Set-off, acknowledgment coupled with claim to, sec. 20, expl. (1).
Share of profits of dissolved partnership, suit for, No. 106.
in joint-family property, suit to enforce right to, No. 127.
Short title, sec. 1.
Signature of acknowledgment or promise, sec. 20.
Slander, suit for, No. 25.
Special appeal,—see *Application.*
Specific recovery of moveables, suit for, No. 35.
performance of contract, suit to enforce, No. 113.
Statutes repealed, sched. I.
Substitution of plaintiff, sec. 22.
Successive breaches of contract, sec. 23.
Suit instituted before 1st April 1873, sec. 1, cl. (*a*).
under Indian Divorce Act, *ib.*, cl. (*b*).
under Madras Regulation VI of 1831, *ib.*, cl. (*c*).
when instituted, sec. 4, expl.
*bonâ fide* in wrong Court, effect of prosecuting, sec. 15.
effect of staying by injunction, commencement of, sec. 16.
by judgment-debtor to set aside execution-sale, effect of, sec. 17.
for which no period is specially provided, No. 118.
Summary decisions and orders of Mofussil Courts, suits to set aside, No. 15.
applications to enforce, No. 166.
Summary Procedure on Bills of Exchange Act, suit under, No. 5.
Summons,—see *Service.*
Surety, suit by, against principal debtor, No. 82.
against co-surety, No. 83.
Surplus collections,—see *Mortgagee.*
Taking moveables, suit for, No. 26.
Tavern bill, suit for amount of, No. 8.
Tenant,—see *Landlord.*
Time, continuous running of, sec. 9.
Time mentioned in Native instruments, sec. 26.
See *Exclusion.*

Title by prescription, secs. 27, 28.
of depositor or pawnor, acknowledgment of, No. 147.
of mortgagor, acknowledgment of, No. 148.
Title-deeds, suit for wrongfully detaining, No. 33.
Tort,—see *Wrong.*
*quasi ex contractu,*—see *Malfeasance, Misfeasance, Nonfeasance, Wrong.*
Transfer of land for arrears of revenue, suit to set aside, No. 17.
Trees, suit for price of, No. 54.
cut down by lessee, suit by lessor for value of, No. 108.
Trespass, not included in 'nusance,' sec. 3.
suit for, No. 43.
'Trustee' defined, sec. 3.
suit against express, sec. 10.
suit to make good loss caused by breach of trust of deceased, No. 99.
suit for contribution against estate of deceased, No. 101.
suit against purchaser of moveables from, No. 133.
suit against purchaser of land from, No. 134.
Undertaking to pay or deliver a debt or legacy, sec. 20, expl.
Under-tenures in an estate sold for arrears of revenue, suit to avoid, No. 119.
in a patní táluq sold for arrears of rent, suit to avoid, No. 120.
Vakíl, his suit for costs, No. 85.
Valuable consideration, effect of, sec. 19, cl. (*b*), Nos. 133, 134.
Vehicles, suit for hire of, No. 49.
Vendee,—see *Purchaser.*
Vendor's lien, suit to enforce, No. 111.
Wages, &c., of workmen engaged in public works, claim for, No. 4.
of domestic servants, artisans and labourers, suit for, No. 7.
of seamen, suit for, No. 102.
Want of jurisdiction, appeal on ground of, sec. 15, expl. 2.
Waste lands, suit to contest an award relating to, No. 1.
Watercourse, acquisition of title to, sec. 27.
suit for obstructing, No. 31.
suit for diverting, sec. 24, ill., No. 32.
Way, acquisition of title to, sec. 27.
suit for obstructing, No. 31.
Wife, suit for person of, No. 41.
See *Conjugal Rights, Divorce Act.*
Work done, suit for price of, No. 55.
Writing,—see *Acknowledgment, Promise.*
Wrong not specially provided for, suit for, No. 40.
See *Administrator, Carrier, Continuing damage, Damaging moveables Death, Distress, Executor, False imprisonment, Fraud, Infringement, Injunction, Injury, Legal process, Libel, Loss, Malfeasance, Malicious prosecution, Misconduct, Misfeasance, Moveable property, Neglect, Nonfeasance, Perversion, Principal, Representative, Service, Slander, Trespass, Watercourse, Way, Wrongdoer, Wrongful seizure.*
Wrongdoer in possession without title, not a 'trustee,' sec. 3.
Wrongful detention of moveables, Nos. 33, 34.
seizure under legal process, suit for, No. 30.

# ACT No. XIV OF 1871.

*Received the Governor General's assent on the 31st March* 1871.

## An Act for the further amendment of the Consolidated Customs Act.

FOR the further amendment of the Consolidated Customs Act (No. VI of 1863); It is hereby enacted as follows:— Preamble.

1. Section twenty-three of the said Act shall be deemed to authorize and to have always authorized the Governor General in Council to prohibit or restrict the importation or exportation, by sea or by land, or both by sea and by land, of any particular class of goods. Amendment of Act VI of 1863, section 23.

2. As often as any goods are lodged in a public warehouse or a licensed private warehouse, the warehouse-keeper, or, in the case of the Bengal Bonded Warehouse Association, the Secretary of the said Association, shall deliver a warrant signed by him as such to the person lodging the goods. Warrant to be given every time goods are warehoused.

Such warrant shall be in the form in the schedule to this Act annexed, and shall be transferable by endorsement; and the endorsee shall be entitled to receive the goods specified in such warrant on the same terms as those on which the person who originally lodged the goods would have been entitled to receive the same. Form of warrant.

3. All goods found on board any boat in excess of the boat-note or Custom-house pass, whether such goods are intended to be landed or to be shipped on board any vessel, shall be liable to confiscation. Goods found in boat in excess of boat-note or pass liable to confiscation.

4. This Act shall be read with and taken as part of the Consolidated Customs Act. Act to be read with Act VI of 1863.

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## SCHEDULE.

### FORM OF BONDED WAREHOUSE WARRANT.

(*See section* 2).

I do hereby certify that have deposited in the Warehouse of the under-mentioned goods

which goods the

engage on demand, after payment of rent and incidental charges and Government Dues or Customs chargeable thereon, to deliver to the said

or their assigns, or to the holder of this warrant to whom it may be transferred by endorsement.

## ACT No. XXIII of 1871.

*Received the Governor General's assent on the 8th August* 1871.

# An Act to consolidate and amend the law relating to pensions and grants by Government of money or land-revenue.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to pensions and grants by Government of money or land-revenue; It is hereby enacted as follows:—

### *I.—Preliminary.*

Short title.

1. This Act may be called "The Pensions Act, 1871:"

Extent of Act.

It extends to the whole of British India;[a]

Commencement.

And it shall come into force on the date of the passing thereof, but not so as to affect any suit in respect of a pension or grant of money or land-revenue which may have been instituted before such date.

Enactments repealed.

2. The enactments mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule.

Saving of rules.

But all rules in regard to the award and payment of pensions or grants of money or land-revenue, and the identification of the persons entitled to receive them, made under any such enactment, shall be deemed to have been made under this Act so far as they are consistent therewith.

Interpretation-clause.

3. In this Act, the expression "grant of money or land-revenue" includes anything payable on the part of Government in respect of any right, privilege, perquisite or office.[b]

### *II.—Rights to Pensions.*

Bar of suits relating to pensions.

4. Except as hereinafter provided, no civil Court shall entertain any suit relating to any pension or grant of money or land-revenue conferred or made by the British or any former Government, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted.

Claims to be made to Collector or other authorized officer.

5. Any person having a claim relating to any such pension or grant may prefer such claim to the Collector of the District or Deputy Commissioner or other officer authorized in this behalf by the Local Government, and such Collector, Deputy Commissioner or other officer shall dispose of

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[a] It has also been applied to the Haidarábád Assigned Districts, *Gazette of India*, 9th December 1871, p. 951, and (with modifications) to Mysore, *Gazette of India*, 23rd August 1873, p. 759.

[b] 23 Suth. W. R., C. R., 378.

such claim in accordance with such rules as the Chief Revenue Authority may, subject to the general control of the Local Government, from time to time prescribe in this behalf.

Civil Court empowered to take cognizance of such claims.

6. A civil Court, otherwise competent to try the same, shall take cognizance of any such claim upon receiving a certificate from such Collector, Deputy Commissioner or other officer authorized in that behalf that the case may be so tried, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly.

7. Nothing in sections four and six applies to—

(1) any inám of the class referred to in the first section of Madras Act No. IV of 1862;[a]

Pensions for lands held under grants in perpetuity.

(2) pensions heretofore granted by Government in the territories respectively subject to the Lieutenant-Governors of Bengal and the North-Western Provinces, either wholly or in part as an indemnity for loss sustained by the resumption by a Native Government of lands held under sanads purporting to confer a right in perpetuity. Such pensions shall not be liable to resumption on the death of the recipient, but every such pension shall be capable of alienation and descent, and may be sued for and recovered in the same manner as any other property.

### *III.—Mode of Payment.*

Payment to be made by Collector or other authorized officer.

8. All pensions or grants by Government of money or land-revenue shall be paid by the Collector or the Deputy Commissioner or other authorized officer, subject to such rules as may, from time to time, be prescribed by the Chief Controlling Revenue Authority.

Saving of rights of grantees of land-revenue.

9. Nothing in sections four and eight shall affect the right of a grantee of land-revenue, whose claim to such grant is admitted by Government, to recover such revenue from the persons liable to pay the same under any law for the time being in force for the recovery of the rent of land.

Commutation of pensions.

10. The Local Government may, with the consent of the holder, order the whole or any part of his pension or grant of money or land-revenue to be commuted for a lump sum on such terms as may seem fit.

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[a] *i. e.*, "ináms of the classes described in clause 1, section 2, [Mad.] Regulation IV of 1831, which have been or shall be enfranchised by the Inám Commissioner and converted into freeholds in perpetuity, or into absolute freeholds in perpetuity." The classes so described are "hereditary or personal grants of money or of land-revenue, however denominated, conferred by the authority of the Governor in Council [or which having been made by any Native Government have been confirmed or continued by the British Government—Act No. XXXI of 1836] in consideration of services rendered to the State, or in lieu of resumed offices or privileges, or of zamíndáris or páleiyams forfeited or held under attachment or management by the officers of Government, or as a yaumiá or charitable allowance, or as a pension."

## *IV.—Miscellaneous.*

Exemption of pension from attachment.

**11.** No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance,

and no money due or to become due on account of any such pension or allowance,

shall be liable to seizure, attachment or sequestration by process of any Court in British India, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

Assignments, &c., in anticipation of pension, to be void.

**12.** All assignments, agreements, orders, sales and securities of every kind made by the person entitled to any pension, pay or allowance mentioned in section eleven, in respect of any money not payable at or before the making thereof, on account of any such pension, pay or allowance, or for giving or assigning any future interest therein, are null and void.

Reward to informers.

**13.** Whoever proves to the satisfaction of the Local Government that any pension is fraudulently or unduly received by the person enjoying the benefit thereof, shall be entitled to a reward equivalent to the amount of such pension for the period of six months.

Power to make rules.

**14.** The Chief Controlling Revenue Authority may, with the consent of the Local Government, from time to time make rules consistent with this Act respecting all or any of the following matters:—

(1) the place and times at which, and the person to whom, any pension shall be paid,

(2) inquiries into the identity of claimants,

(3) records to be kept on the subject of pensions,

(4) transmission of such records,

(5) correction of such records,

(6) delivery of certificates to pensioners,

(7) registers of such certificates,

(8) reference to the civil Court under section six, of persons claiming a right of succession to, or participation in, pensions or grants of money or land-revenue payable by Government,

and generally for the guidance of officers under this Act.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.[a]

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[a] See the Bengal rules, *Calcutta Gazette*, 15th September 1875, p. 1144: Madras rules, *Fort St. George Gazette*, 3rd August 1875, p. 1335; Bombay rules, *Bombay Government Gazette*, 7th August 1873, p. 656: Panjáb rules, *Panjáb Government Gazette*, 16th January 1873, p. 13, 30th October 1873, p. 627, 8th October 1874, p. 348: Oudh rules, *Oudh Government Gazette*, 19th October 1872, p. 68: Central Provinces rules, *Central Provinces Gazette*, 3rd July 1875, part I A, p. 123. Rules dated 28th May, 1875, were made under this section, with the sanction of the Local Government, by the Board of Revenue, North-Western Provinces: but they have not been published in the *North-Western Provinces Gazette*.

## SCHEDULE.

### I.—Bengal Regulations.

| Number and year. | Title or subject. | Extent of repeal. |
|---|---|---|
| XXIV of 1793 ... | A Regulation for re-enacting, with Modifications, the Rules passed by the Governor-General in Council on the 10th June, 1791, for determining the Continuance or Discontinuance of the Pensions heretofore paid by the Proprietors and Farmers of Land, but included in the Jama or Revenue payable to Government at the Decennial Settlement, and also of the Pensions heretofore paid from the Sáír abolished. | The whole. |
| XXXIV of 1795 ... | A Regulation for re-enacting, with Modifications, the Rules respecting the Pensions payable from the Government and Mulkí Treasuries in the Province of Benares. | The whole. |
| XXIV of 1803 ... | A Regulation for trying the Validity of Titles of Persons receiving, or claiming a right to receive, Pensions, under the Denominations of Sáliánah, Rozínah, or any other Description of Grant, in the Provinces ceded by the Nawáb Wazír to the Honourable the English East India Company. | The whole. |
| I of 1804 ... | A Regulation for the better Management of the Invalid Jágírdár Establishments and of the Invalid Pension Establishments. | Sections twenty-three to twenty-six inclusive. |
| XXII of 1806 ... | A Regulation for modifying the Rules hitherto observed in the admission and Payment of Claims to Pensions. | The whole. |
| II of 1811 ... | A Regulation for amending the existing Rules for the Support of Invalid Native Commisssioned and Non-Commissioned Officers. | The whole. |
| XI of 1813 ... | A Regulation for modifying some of the Rules before established respecting the Payment of Pensions, and for preventing the Abuses committed in the receipt of Pensions. | The whole. |
| VI of 1817 ... | A Regulation to explain the Purport and Intent of the Provision contained in Section II, Regulation XXIV. 1803. | The whole. |

## II.—Madras Regulations.

| Number and year. | Title or subject. | Extent of repeal. |
|---|---|---|
| I of 1803 ... | A Regulation for defining the Duties of the Board of Revenue, and for determining the Extent of the Powers vested in the Board of Revenue. | Section forty-three. |
| II of 1803 ... | A Regulation for describing and determining the Conduct to be observed by Collectors in certain Cases. | Section thirty. |
| IV of 1831 ... | A Regulation for better securing to the Grantees personal or hereditary Grants of Money or of Land Revenue, conferred by the Government in consideration of Services rendered to the State, or in lieu of resumed Offices or Privileges, or of Zamíndárís, or Páleiyams forfeited or held under Attachment or Management by the Officers of Government, or as Yaumiás or Pensions. | The whole. |

## III.—Bombay Regulation.

| | | |
|---|---|---|
| XXIX of 1827 ... | A Regulation for bringing under the operation of the Regulations the Bombay Territories in the Dekkan and Khandesh. | Section six, clauses 2 & 3. |

## IV.—Acts.

| | | |
|---|---|---|
| XXXI of 1836 ... | Government Grants ... ... | The whole. |
| XXIII of 1838 ... | Exemption of Grants from attachment ... | The whole. |
| VI of 1849 ... | An Act for securing Military and Naval Pensions and Superannuation Allowances. | The whole. |

## ACT No. XXIV OF 1871.

*Received the Governor General's assent on the 5th September* 1871.

# The Local Public Works Loan Act, 1871.

1. This Act may be called "The Local Public Works Loan Act, 1871:" It shall extend to the whole of British India. Title. Extent.

2. Any body corporate, municipal committee, or other persons legally entitled to the control or management of any local or municipal fund, or legally entitled to impose any cess, rate, duty or tax upon any persons in any local limits, may apply to the Local Government for a loan on the security of any such fund, cess, rate, duty or tax, or of any property vested in such body, committee or persons for the purposes of such fund in the manner hereinafter mentioned. Loans to be based on security of public property or taxes.

3. No such body corporate, municipal committee, or other persons shall borrow money upon or otherwise charge any such fund, cess, rate, duty, tax or property otherwise than in the manner hereinafter mentioned; and any contract made for that purpose after the passing of this Act shall be void. Loans not to be effected except under Act.

4. The Governor General in Council may make, and from time to time amend and alter, rules as to Power to Governor General in Council to make rules.

(1) the nature of the fund, rates, cesses, duties, taxes or property on the security of which loans may be made;

(2) the works for which loans may be made;

(3) the manner of making applications for loans;

(4) the inquiries to be made in relation to such loans, and the manner of conducting such inquiries;

(5) the cases and the forms in which particulars of applications and proceedings, and orders thereon, shall be published;

(6) the cases in which the Local Government may make loans without the previous sanction of the Governor General in Council, and the cases in which such previous sanction must be obtained;

(7) the manner of recording and enforcing the conditions on which such loans are to be made;

(8) the manner and time of making loans;

(9) the inspection of works carried out by loans;

(10) the instalments by which loans shall be repaid, the interest to be charged on loans,[a] and the manner and time of repaying loans and of paying the interest thereon;

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[a] *Gazette of India*, 1st March 1873, p. 191.

(11) the sum to be charged against the fund, cess, rate, duty, tax or property which is to form the security for the loan, as costs in effecting the loan;

(12) the accounts to be kept in respect of loans;

(13) the attachment of securities and the manner of disposing of or collecting them;

and as to all other matters incidental to carrying this Act into effect.

All such rules shall be published in the *Gazette of India*.[a]

Remedy by attachment if loan not repaid.

5. If any loan made under this Act, or the interest accrued thereupon, is not repaid according to the conditions of the loan, the Local Government may attach the fund, rate, cess, tax, duty or property on the security of which the loan was made; after such attachment, no person except an officer appointed by the Local Government shall in any way deal with the attached fund, rate, cess, tax, duty or property, but such officer may do all acts in respect thereof which the borrowers might have done if such attachment had not taken place, and may apply the proceeds in satisfaction of the loan and of all interest and charges due in respect thereof, and of all expenses involved by the attachment and subsequent proceedings: Provided that no such attachment shall defeat or prejudice any debt for which the fund, cess, rate, tax, duty or property attached was previously pledged in accordance with law, but all such prior charges shall be paid out of the proceeds of the fund, cess, rate, tax, duty or property attached, before any part of the proceeds is applied to the satisfaction of a liability incurred under this Act.

Attachment not to defeat prior charges legally made.

Local Government may authorize parties to borrow from private persons.

Procedure on such loan not being repaid.

6. The Local Government, with the previous sanction of the Governor General in Council, may authorize any body corporate, municipal committee or other persons who might have borrowed money from Government under this Act upon any security, to borrow money from any other person upon such security; and if any such loan or the interest accrued be not duly repaid, the Local Government shall, upon the application of the lender, exercise for his benefit the same powers as if the loan had been made by Government under this Act.

Existing loans.

7. The Governor General in Council or the Local Government may declare that any person who, before the passing of this Act, has lent money to any such body corporate, municipal committee or other persons as are mentioned in section two, shall be entitled to the remedy mentioned in section six for the recovery thereof or of the interest due thereupon; and the Government of India may, in the case of any such loan granted by itself, direct the Local Government to proceed under section six in respect of any such loan.

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[a] See *Gazette of India*, 27th April 1872, p. 456.

8. The Local Government shall exercise the discretionary powers given by this Act, according to any direction in that behalf which it may receive in any particular case from the Governor General in Council.

Local Governments to comply with special directions of the Government of India.

9. Nothing in this Act shall apply to any charitable or religious foundation or be deemed to preclude the municipalities of Calcutta, Madras or Bombay from exercising the borrowing powers conferred on them by any special law.

Saving of charitable or religious foundations, and special borrowing powers of certain municipalities.

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## ACT No. XXV OF 1871.

*Received the Governor General's assent on the 5th September* 1871.

## An Act to amend the Railway Act.

WHEREAS it is expedient further to amend Act No. XVIII of 1854 *(relating to Railways in India)*; It is hereby enacted as follows:

Preamble.

1. This Act may be called "The Railway Act Amendment Act, 1871:"

Short title.

It shall be read with, and taken as part of, the said Act No. XVIII of 1854 *(relating to Railways in India)* and Act No. XIII of 1870 *(to apply the provisions of Act No. XVIII of* 1854 *to Railways belonging to, or worked by, Government)*.[a]

Construction.

2. Act XVIII of 1854 shall be read as if, for sections one, eighteen, nineteen, twenty, twenty-one, twenty-six and twenty-nine of the said Act, the following sections were substituted:—

Amendment of certain sections of Act XVIII of 1854.

"I. [*See above, vol. i., p.* 125.]

"XVIII. [*See above, vol. i., p.* 129.]

"XIX. [*See above, vol. i., p.* 130.]

"XX. [*See above, vol. i., p.* 130.]

"XXI. [*See above, vol. i., p.* 130.]

"XXVI. [*See above, vol. i., p.* 131.]

"XXIX. [*See above, vol. i., p.* 132.]

3. After section XLIII of the said Act, the following section shall be added:—

"XLIV. [*See above, vol. i, p.* 135.]

4. Instead of so much of section three of Act XIII of 1870 as begins with the words "but in sections seventeen" and ends with the section, the following shall be read:—

"but [*See above, p.* 1241.]

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[a] Act XXV of 1871 has been applied to Mysore, *Gazette of India*, 9th December 1871, p. 951.

# THE LAND IMPROVEMENT ACT, 1871.

## CONTENTS.

PREAMBLE.

CHAPTER I.—PRELIMINARY.

SECTIONS.

1. Short title.
   Local extent.
2. [*Repealed by Act No. XII of* 1873.]
3. Interpretation-clause.

CHAPTER II.—ADVANCES OF MONEY FOR MAKING IMPROVEMENTS.

4. Application for advance.
5. Procedure on receiving application.
6. When advance may be sanctioned to landlord.
7. Procedure when applicant is a tenant.
8. Proof of service of notice.
9. Contents of notice.
10. When advance may be sanctioned to tenant.
11. Notice of application by tenant unable to furnish security to be served on landlord.
12. Service of such notice and particulars to be specified therein.
13. Advance not to be sanctioned when dissent is made by landlord.
14. Contents of certificates under Act.
15. Advances recoverable as arrears of land-revenue.
16. Sums expended for costs recoverable as part of advance.
17. Advance not to raise presumption of ownership.

CHAPTER III.—SUPPLEMENTARY POWERS.

18. Power to make rules.

## ACT No. XXVI OF 1871.

*Received the Governor General's assent on the* 28*th September* 1871.

An Act to consolidate and amend the law relating to advances of money by the Government for agricultural improvements.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to advances of money by the Government for agricultural improvements; It is hereby enacted as follows:—

### CHAPTER I.—PRELIMINARY.

Short title.

1. This Act may be called "The Land Improvement Act, 1871:"

Local extent.

It extends to the whole of British India;[a]

[a] It has also been applied to the Haidarábád Assigned Districts, *Gazette of India*, 2nd December 1871, p. 989.

2. [*Repealed by Act No. XII of* 1873.]

3. In this Act— Interpretation-clause.

"Land" means land used for agricultural purposes, or waste land which is culturable: "Land."

"Rent" means whatever is payable or deliverable for the use or occupation of land: "Rent."

"Landlord" includes a superior, intermediate or immediate proprietor, and any person under direct engagement with the Government for the payment of the revenue assessed upon any land: "Landlord."

"Tenant" means any person actually using or occupying land, and liable to pay or deliver rent therefor: "Tenant."

"Improvement" means— "Improvement."

1*st*, wells, tanks and other works for the storage, supply or distribution of water for agricultural purposes, or the preparation of land for irrigation;

2*nd*, works for the drainage of land;

for the reclaiming of land from rivers, or from other waters;

for the protection of land from floods, or from erosion or other damage by water;

3*rd*, the reclaiming, clearing or enclosing of lands for agricultural purposes;

4*th*, the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto:

"Collector" means the Collector of land-revenue, or the Deputy Commissioner, or any officer authorized by the Local Government to exercise the powers of a Collector under this Act. "Collector."

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## CHAPTER II.—Advances of Money for making Improvements.

4. Any landlord or tenant desiring to make an improvement in any land of which he is in possession or occupation, and to obtain an advance of money to enable him to make such improvement, may make an application to the Collector for such advance, stating the nature and amount of any security which he proposes to furnish for the repayment of such advance. Application for advance.

5. On receiving such application, the Collector shall make such enquiry as he deems necessary to ascertain if the proposed improvement will admit of the advance being made conformably to the rules to be framed under the third clause of section eighteen. Procedure on receiving application.

If after such enquiry the Collector is of opinion that the advance may be so made, he shall proceed in the manner hereinafter provided, but if it should appear that the advance cannot be so made, he shall reject the application.

When advance may be sanctioned to landlord.

6. If the applicant is a landlord, and the value of the land for the improvement of which the advance is asked, or of any other security which may be tendered, or of both, be not less than the amount of the proposed advance, the Collector may grant a certificate sanctioning the advance.

Procedure when applicant is a tenant.

7. When the applicant is a tenant, and proposes to furnish, as security for the repayment of the advance, any interest alleged to be transferable which he possesses in the land to be improved or any other land, or any other adequate security, the Collector shall serve notice of the application on the landlord personally;

or, if service on him personally cannot be effected, a copy of the notice shall be affixed to some conspicuous place in the Collector's office, and on the house in which the landlord resides; or if he does not reside in the district in which the application is made, or if his residence is not known, the notice shall be served on the person who acts as the local agent for the landlord in respect of the said land.

Proof of service of notice.

8. No such notice shall be deemed to have been served unless the service is acknowledged by the landlord or his agent, or the fact of its having been duly made is otherwise established to the satisfaction of the Collector.

In any case in which there are more shareholders than one, and any shareholder or other person acts as a manager on behalf of the shareholders, service on him shall be deemed to be service on each of the shareholders.

Contents of notice.

9. Such notice shall specify the sum applied for, the nature of the improvement to be made, the nature of the security proposed for the advance, and shall inform the landlord that, if he desires to make any objections to the advance, he must, within one month after service of notice, signify them in writing to the Collector.

When advance may be sanctioned to tenant.

10. If the landlord or his local agent or manager does not so signify such objections, or if the Collector, after considering such objections, is of opinion that the applicant has a transferable interest in the land specified in his application, and that the value of such interest either singly or taken jointly with other security furnished by him is not less than the amount of the advance, he may grant to the applicant a certificate sanctioning the advance.

Notice of application by tenant unable to furnish security to be served on landlord.

11. When the applicant is a tenant, and cannot furnish security of the nature referred to in section seven, the Collector shall serve notice of the application on the landlord.

**12.** Such notice shall be served in the manner provided in sections seven and eight. It shall specify the amount of the proposed advance and the nature of the improvement to be made, and shall inform the landlord that, if he does not within one month after such service signify in writing to the Collector his dissent from the proposed improvement, he will be deemed to have assented thereto and to have agreed that the land, for the improvement of which the advance is to be made, shall be pledged as security for the recovery of the advance.

Service of such notice and particulars to be specified therein.

**13.** If the landlord so signifies his dissent, and after the Collector has explained his reasons for thinking the improvement desirable, the landlord does not withdraw such dissent, the Collector shall not grant the certificate.

Advance not to be sanctioned when dissent is made by landlord.

If the landlord does not signify his dissent, or, having dissented, subsequently withdraws his dissent, and the value of the land to be improved, or the value of such land together with that of any other security furnished by the applicant, is not less than the amount of the advance, the Collector may grant to the applicant a certificate sanctioning the advance.

**14.** Every certificate granted under this Act shall specify—

Contents of certificates under Act.

(*a*) the amount of the advance;

(*b*) the conditions under which it is to be made and recovered;

(*c*) the position, extent and boundaries of the land to be improved;

(*d*) the nature and amount of the security furnished (if any), other than the land to be improved.

**15.** All sums stated in a certificate granted under this Act shall, when they become due, be recoverable from the person to whom the advance was made, or from any person who has become security for the repayment thereof, as if they were arrears of land-revenue due by the person to whom the advance was made or by his security.

Advances recoverable as arrears of land-revenue.

If any such sum cannot be so recovered, it shall be recoverable as if it was an arrear of revenue due on the land specified in the said certificate:

Provided that when the person to whom the advance was made is a landlord or a tenant having a right to transfer his interest in the land without the consent of the landlord, the interest of no person, other than such landlord or tenant, in the said land shall be sold under this section.

**16.** Any sums expended by the Collector in accordance with the rules made under section eighteen, on account of costs of the Government in giving effect to this Act, shall be recoverable as if they were part of the advance in connection with which they were expended.

Sums expended for costs recoverable as part of advance.

**17.** In any case in which a landlord has agreed, under section thirteen, that the land, for the improvement of which an advance under this Act is made, shall be pledged as security for such advance, such improvement shall

Advance not to raise presumption of ownership.

not be deemed to confer upon the tenant any right to, or interest in, such land, or to alter the respective rights or interests of landlord and tenant therein.

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## CHAPTER III.—SUPPLEMENTARY POWERS.

Power to make rules.

18. The Local Government, with the previous sanction of the Governor General in Council, shall make rules consistent with this Act in all matters connected with its enforcement, and may, with the same sanction, from time to time, alter and add to the rules so made.

Such rules shall make provision for—

*1st*, the manner of making applications for advances under the Act;

*2nd*, the manner of conducting inquiries relative to such applications;

*3rd*, the conditions under which advances are to be made, and the manner and time of making advances;

*4th*, the inspection of works carried out by advances made under this Act;

*5th*, the instalments by which advances shall be repaid, the interest to be charged on advances, and the manner and time of repaying advances and discharging the interest charged on the same;

*6th*, the manner of keeping and auditing the accounts of the expenditure of advances, of the repayment of the same, and of the discharge of the interest thereon.[a]

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# CRIMINAL TRIBES ACT, 1871.

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## CONTENTS.

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PREAMBLE.

SECTION.

1. Short title.
   Local extent.

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[a] Bengal rules, *Calcutta Gazette*, 9th July 1873, p. 826.
Madras rules, *Fort St. George Gazette*, 24th June 1873, p. 1065.
Bombay rules, *Bombay Government Gazette*, 23rd October 1873, p. 874.
N. W. Provinces rules, *N. W. Provinces Gazette*, 28th June 1873, p. 787: 14th March 1874, p. 667.
Panjáb rules, *Panjáb Government Gazette*, 18th November 1875, p. 415.
Oudh rules, *Oudh Government Gazette*, 21st August 1875, p. 25.
Central Provinces rules, *Central Provinces Gazette*, 14th June 1873, p. 91.

## PART I.—Criminal Tribes.

Section.

2. Local Government to report what tribes should be declared criminal.
3. Report to contain certain particulars.
4. Occupation of wandering tribe to be stated ;
   also proposed residence and means of livelihood.
5. Notification declaring tribe to be criminal.
6. Bar of jurisdiction of Courts in questions relating to notification.
7. Register of members of such tribes.
8. Procedure in making register.
9. Penalties for failing to appear, refusing or giving false information.
10. Charge of register.
    Reporting desirable alterations.
11. By whom alterations to be made.
    Notice to persons affected.
12. Complaints of entries in register.
13. Settlement of tribe in place prescribed by Local Government.
14. Removal to other place.
15. Arrangements to be made prior to settlement or removal.
16. Transfer of register of persons ordered to be removed.
17. Power to place tribe in reformatory settlement.
18. Power to make rules.
19. Penalties for breach of rules.
20. Arrest of registered person found beyond prescribed limits.
21. Duties of Village-Headmen, Village-Watchmen, &c.
22. Penalty for breach of such duties.
23. Indemnity for past registrations and detentions.

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## PART II.—Eunuchs.

24. Registers of eunuchs and their property.
    'Eunuch' defined.
25. Complaints of entries in register.
26. Penalty on registered eunuch appearing in female clothes ;
    or dancing in public, or for hire.
27. Penalty on registered eunuch keeping boy under sixteen.
28. Maintenance and education of boys whose parents cannot be found.
29. Disabilities of registered eunuchs.
30. Power to require information as to registered eunuch's property.
    Penalty for refusing such information.
31. Rules for making and keeping up registers of eunuchs.

# ACT No. XXVII OF 1871.

*Received the Governor General's assent on the 12th October 1871.*

## An Act for the Registration of Criminal Tribes and Eunuchs.

Preamble.

WHEREAS it is expedient to provide for the registration, surveillance and control of certain criminal tribes and eunuchs; It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Criminal Tribes Act, 1871."

Local extent.

This section and section twenty extend to the whole of British India; the rest of this Act extends only to the territories under the governments of the Lieutenant-Governors of the North-Western Provinces and the Panjáb, respectively, and under the administration of the Chief Commissioner of Oudh.

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### PART I.—CRIMINAL TRIBES.

Local Government to report what tribes should be declared criminal.

2. If the Local Government has reason to believe that any tribe, gang or class of persons is addicted to the systematic commission of non-bailable offences, it may report the case to the Governor General in Council, and may request his permission to declare such tribe, gang or class to be a criminal tribe.

Report to contain certain particulars.

3. The report shall state the reasons why such tribe, gang or class is considered to be addicted to the systematic commission of non-bailable offences, and, as far as possible, the nature and the circumstances of the offences in which the members of the tribe are supposed to have been concerned; and shall describe the manner in which it is proposed that such tribe, gang or class shall earn its living when the provisions hereinafter contained have been applied to it.

Occupation of wandering tribe to be stated;

4. If such tribe, gang or class has no fixed place of residence, the report shall state whether such tribe, gang or class follows any lawful occupation, and whether such occupation is, in the opinion of the Local Government, the real occupation of such tribe, gang or class, or a pretence for the purpose of facilitating the commission of crimes, and shall set forth the grounds on which such opinion is based; and the report shall also specify the place of residence in which such wandering tribe, gang or class is to be settled under the provisions hereinafter contained, and the arrangements which are proposed to be made for enabling it to earn its living therein.

also proposed residence and means of livelihood.

Notification declaring tribe to be criminal.

5. If, upon the consideration of any such report, the Governor General in Council is satisfied that the tribe, gang or class to which it relates ought to be declared criminal, and that the means by which it is proposed that such

tribe, gang or class shall earn its living are adequate, he may authorize the Local Government to publish in the local Gazette a notification declaring that such tribe, gang or class is a criminal tribe, and thereupon the provisions of this Act shall become applicable to such tribe, gang or class.

Bar of jurisdiction of Courts in questions relating to notification.

6. No Court of justice shall question the validity of any such notification on the ground that the provisions hereinbefore contained, or any of them, have not been complied with, or entertain in any form whatever the question whether they have been complied with; but every such notification shall be conclusive proof that the provisions of this Act are applicable to the tribe, gang or class specified therein.

Register of members of such tribes.

7. When the notification mentioned in section five has been published, the Local Government may direct the Magistrate of any district in which such tribe, gang or class, or any part thereof, is at the time resident, to make a register of the members of such tribe, gang or class, or of any part thereof.

The declaration of the Local Government that any such tribe, gang or class, or any part of it, is resident in any district, shall be conclusive proof of such residence:

Procedure in making register.

8. Upon receiving such direction, the said Magistrate shall publish a notice in the place where the register is to be made, calling upon all the members of such tribe, gang or class, or of such portion thereof as is directed to be registered, to appear, at a time and place therein specified, before such persons as he appoints, and to give those persons such information as may be necessary to enable them to make the register.

Penalties for failing to appear, refusing or giving false information.

9. Any member of such tribe, gang or class who, without lawful excuse, the burthen of proving which shall lie upon him,

shall fail to appear according to such notice,

or who shall intentionally omit to furnish such information,

or who shall furnish, as true, information on the subject which he knows or has reason to believe to be false,

shall be deemed guilty of an offence under the first parts of section one hundred and seventy-four, or one hundred and seventy-six, or one hundred and seventy-seven of the Indian Penal Code, respectively, as the case may be.

Charge of register.

Reporting desirable alterations.

10. The register, when made, shall be kept by the District Superintendent of Police, who shall, from time to time, report to the said Magistrate any alterations which ought to be made therein, either by way of addition or erasure.

By whom alterations to be made.

11. No alteration shall be made in such register except by or by order of the said Magistrate, and he shall write his initials against every such

Notice to persons affected.

alteration. Notice shall be given of any such intended alteration, and of the time when, and place where, it is to be made, to every person affected thereby.

Complaints of entries in register.

12. Any person deeming himself aggrieved by any entry made, or proposed to be made, in such register, either when the register is first made or subsequently, may complain to the said Magistrate against such entry, and the Magistrate shall retain such person's name on the register, or enter it therein, or erase it therefrom, as he may see fit.

Every order for the erasure of any such person's name shall state the grounds on which such person's name is erased.

The Commissioner shall have power to review any order of entry, retention or erasure, passed by the said Magistrate on any such complaint, either on appeal by the person registered or proposed to be registered, or otherwise.

Settlement of tribe in place prescribed by Local Government.

13. Any tribe, gang or class, which has been declared to be criminal, and which has no fixed place of residence, may be settled in a place of residence prescribed by the Local Government.

Removal to other place.

14. Any tribe, gang or class which has been declared to be criminal, or any part thereof, may, by order of the Local Government, be removed to any other place of residence.

Arrangements to be made prior to settlement or removal.

15. No tribe, gang or class, shall be settled or removed under the provisions of this Act until such arrangements as the Local Government shall, with the concurrence of the Governor General in Council, consider suitable, have been made for enabling such tribe, gang or class, or such part thereof as is to be so settled or removed, to earn a living in the place in or to which it is to be settled or removed.

Transfer of register of persons ordered to be removed.

16. When the removal of any persons has been ordered under this Act, the register of such persons' names shall be transferred to the District Superintendent of Police of the district to which such persons are removed, and the Magistrate of the said district and the Commissioner of the division in which it is situated, shall thereupon be empowered to exercise respectively the powers provided in sections eleven and twelve.

Power to place tribe in reformatory settlement.

17. The Local Government may, with the sanction of the Governor General in Council, place any tribe, gang or class, which has been declared to be criminal, or any part thereof, in a reformatory settlement.

Power to make rules.

18. The Local Government may, with the previous consent of the Governor General in Council, make rules to prescribe—

(1) the form in which the register shall be made by the said Magistrate;

(2) the mode in which the said Magistrate shall publish the notice prescribed in section eight, and the means by which the persons whom it concerns,

and the Headmen, Village-Watchmen and landowners or occupiers of the village, in which such persons reside, shall be informed of its publication;

(3) the mode in which the notice prescribed in section eleven shall be given;

(4) the limits within which persons whose names are on the register shall reside;

(5) conditions as to holding passes, under which such persons may be permitted to leave the said limits;

(6) conditions to be inserted in any such pass as to

(*a*) the places where the holder of the pass may go or reside;

(*b*) the officers before whom, from time to time, he shall be bound to present himself;

(*c*) and the time during which he may absent himself;

(7) conditions as to answering at roll-call or otherwise, in order to satisfy the said Magistrate or persons authorized by him that the persons whose names are on the register are actually present at given times within the said limits;

(8) the inspection of the residences and villages of any such tribe, gang or class, and the prevention or removal of contrivances for enabling the residents therein to conceal stolen property, or to leave their place of residence without leave;

(9) the terms upon which registered persons may be discharged from the operation of this Act;

(10) the mode in which criminal tribes shall be settled and removed;

(11) the control and supervision of reformatory settlements;

(12) the works on which, and the hours during which, persons placed in a reformatory settlement shall be employed, the rates at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus proceeds of their labour after defraying the whole or such part of the expenses of their supervision and control as to the Local Government shall seem fit;

(13) the discipline to which persons endeavouring to escape from any such settlement, or otherwise offending against the rules for the time being in force, shall be submitted; the periodical visitation of such settlement, and the removal from it of such persons as it shall seem expedient to remove;

(14) and generally to carry out the purposes of this Act.[a]

**19.** Any person violating any of the rules made under section eighteen shall be punished with rigorous imprisonment for a term which may extend

Penalties for breach of rules.

[a] N. W. Provinces rules, *N. W. Provinces Gazette*, 21st March 1874, p. 701: Panjáb rules, *Panjáb Government Gazette*, 13th February 1873, p. 99.

to six months, or with fine, or with whipping, or with all or any two of those punishments; and, on any second conviction for a breach of any of the said rules, with rigorous imprisonment which may extend to one year, or with fine, or with whipping to be inflicted in the manner prescribed by any law in force for the time being in relation to whipping, or with all or any two of those punishments.

Arrest of registered person found beyond prescribed limits.

20. Any person registered under the provisions of this Act, who is found in any part of British India, beyond the limits so prescribed for his residence, without such pass as may be required by the said rules, or in a place or at a time not permitted by the conditions of his pass,

or who escapes from a reformatory settlement,

may be arrested without warrant by any Police officer or Village-Watchman, and taken before a Magistrate, who, on proof of the facts, shall order him to be removed to the district in which he ought to have resided, or to the reformatory settlement from which he has escaped (as the case may be), there to be dealt with according to the rules under this Act for the time being in force.

The rules for the time being in force for the transmission of prisoners shall apply to all persons removed under this section: Provided that an order from the Local Government or from the Inspector-General of Prisons shall not be necessary for the removal of such persons.

Duties of Village-Headmen, Village-Watchmen, &c.

21. It shall be the duty of every Village-Headman and Village-Watchman in a village in which any persons belonging to a tribe, class or gang which has been declared criminal reside, and of every owner or occupier of land on which any such persons reside, to give the earliest information in his power at the nearest police station of

(1) the failure of any such person to appear and give information, as directed in section eight;

(2) the departure of any such person from such village or from such land (as the case may be).

And it shall be the duty of every Village-Headman and Village-Watchman in a village, and of every owner or occupier of land, to give the earliest information in his power at the nearest police station of the arrival at such village or on such land (as the case may be) of any persons who may reasonably be suspected of belonging to any such tribe, class or gang.

Penalty for breach of such duties.

22. Any Village-Headman, Village-Watchman, owner or occupier of land, who shall fail to comply with the requirements of section twenty-one, shall be deemed to have committed an offence under the first part of section one hundred and seventy-six of the Indian Penal Code.

23. All Magistrates and other persons are hereby indemnified for anything heretofore done under the circular order 18 of 1856 of the Judicial Commissioner of the Panjáb, or under any orders of the Local Governments of the North-Western Provinces or Oudh, relating to the registration or detention of tribes regarded by such Local Governments as criminal tribes; and no suit or other proceeding shall be maintained against any such Magistrate or other person in respect of anything so done. Indemnity for past registrations and detentions.

## PART II.—EUNUCHS.

24. The Local Government shall cause the following registers to be made and kept up by such officer as, from time to time, it appoints in this behalf:— Registers of eunuchs and their property.

(*a*) a register of the names and residences of all eunuchs residing in any town or place to which the Local Government specially extends this Part of this Act, who are reasonably suspected of kidnapping or castrating children, or of committing offences under section three hundred and seventy-seven of the Indian Penal Code, or of abetting the commission of any of the said offences; and

(*b*) a register of the property of such of the said eunuchs as, under the provisions hereinafter contained, are required to furnish information as to their property.

The term 'eunuch' shall, for the purposes of this Act, be deemed to include all persons of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent. 'Eunuch' defined.

25. Any person deeming himself aggrieved by any entry made or proposed to be made in such register, either when the register is first made or subsequently, may complain to the said officer, who shall enter such person's name, or erase it, or retain it, as he sees fit. Complaints of entries in register.

Every order for erasure of such person's name shall state the grounds on which such person's name is erased.

The Commissioner shall have power to review any order passed by such officer on such complaint, either on appeal by the complainant or otherwise.

26. Any eunuch so registered who appears, dressed or ornamented like a woman, in a public street or place, or in any other place, with the intention of being seen from a public street or place, Penalty on registered eunuch appearing in female clothes;

or dancing in public, or for hire.

or who dances or plays music, or takes part in any public exhibition, in a public street or place or for hire in a private house,

may be arrested without warrant, and shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Penalty on registered eunuch keeping boy under sixteen.

**27.** Any eunuch so registered who has in his charge, or keeps in the house in which he resides, or under his control, any boy who has not completed the age of sixteen years, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Maintenance and education of boys whose parents cannot be found.

**28.** The Magistrate may direct that any such boy shall be returned to his parents or guardians, if they can be discovered. If they cannot be discovered, the Magistrate may make such arrangements as he thinks necessary for the maintenance and education of such boy, and may direct that the whole or any part of a fine inflicted under section twenty-seven may be employed in defraying the cost of such arrangements.

The Local Government may direct out of what local or municipal fund so much of the cost of such arrangements as is not met by the fine imposed, shall be defrayed.

Disabilities of registered eunuchs.

**29.** No eunuch so registered shall be capable—

(*a*) of being or acting as guardian to any minor,

(*b*) of making a gift,

(*c*) of making a will, or

(*d*) of adopting a son.

Power to require information as to registered eunuch's property.

**30.** Any officer authorized by the Local Government in this behalf may, from time to time, require any eunuch so registered to furnish information as to all property, whether movable or immovable, of or to which he is possessed or entitled, or which is held in trust for him.

Penalty for refusing such information.

Any such eunuch intentionally omitting to furnish such information, or furnishing, as true, information on the subject which he knows, or has reason to believe, to be false, shall be deemed to have committed an offence under section one hundred and seventy-six or one hundred and seventy-seven of the Indian Penal Code, as the case may be.

Rules for making and keeping up registers of eunuchs.

**31.** The Local Government may, with the previous sanction of the Governor General in Council, make rules for the making and keeping up and charge of registers made under this Part of the Act.[a]

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[a] N. W. Provinces rules, *N. W. Provinces Gazette*, 20th July 1872, p. 845 : Panjáb rules, *Panjáb Government Gazette*, 12th June 1873, p. 331.

# THE INDIAN WEIGHTS AND MEASURES OF CAPACITY ACT, 1871.

## CONTENTS.

PREAMBLE.

*I.—Preliminary.*

SECTION.

1. Short title.
   Local extent.

*II.—Standards.*

2. Standard of weight.
3. Units of weights and measures of capacity.
4. Special weights and measures of capacity may be authorized.
5. Districts how defined.
   Sub-districts how defined.
6. Primary standards to be provided.
7. Local standards to be provided.

*III.—Use of new Weights and Measures of Capacity.*

8. Use of new weights and measures of capacity in Government offices, &c.
9. Contracts by weight or measure of capacity.

*IV.—Wardens.*

10. Appointment of Wardens.
11. Power to make rules.
12. Publication of rules.
    Rules, when specially applied, to have force of law.
13. Officers of Government and others to comply with rules.
14. Warden may refuse to verify or correct things unfit.
15. Exercise of any of Warden's powers.
16. Counterfeiting Warden's marks.
17. Tables of equivalents.

## ACT No. XXXI OF 1871.

*Received the Governor General's assent on the 30th October* 1871.

# An Act to regulate the Weights and Measures of Capacity of British India.

Preamble.

WHEREAS it is expedient to provide for the ultimate adoption of an uniform system of Weights and Measures of Capacity throughout British India; It is hereby enacted as follows:—

### *I.—Preliminary.*

Short title. Local extent.

1. This Act may be called "The Indian Weights and Measures of Capacity Act, 1871," and extends to the whole of British India.

### *II—Standards.*

Standard of weight.

2. The primary standard of weight shall be called a ser, and shall be a weight of metal in the possession of the Government of India, equal, when weighed in a vacuum, to the weight known in France as the Kilogramme des Archives.

Units of weights and measures of capacity.

3. The units of weight and of measures of capacity shall be—

for weights, the said ser;

for measures of capacity, a measure containing one such ser of water at its maximum density, weighed in a vacuum.

Special weights and measures of capacity may be authorized.

4. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, declare the magnitude and denominations of the weights and measures of capacity, other than the said units, to be authorized under this Act:

Provided that every such weight or measure of capacity shall be an integral multiple or integral sub-multiple of one of the units aforesaid.

The Governor General in Council may, in like manner, revoke such notification.

Unless it be otherwise ordered in any such notification, the sub-divisions of all such weights and measures of capacity shall be expressed in decimal parts.

Districts how defined.

5. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, define the limits of districts for the purposes of this Act.

Sub-districts how defined.

The Local Government may, from time to time, by notification in the official Gazette, define the limits of sub-districts for the purposes of this Act.

Primary standards to be provided.

6. The Governor General in Council may provide, for such districts as he thinks fit, proper primary standards and sets of the said authorized weights and measures of capacity.

Such standards shall, for the purposes of this Act, be deemed the standards for such districts.

7. The Local Government may provide, for such sub-districts as it thinks fit, copies of such of the said authorized weights and measures of capacity as shall be necessary to serve as local standards in such sub-districts.

Local standards to be provided.

Such local standards shall be deemed correct, until they are proved to be otherwise.

*III.—Use of new Weights and Measures of Capacity.*

8. Whenever the Governor General in Council considers that proper standard weights and measures of capacity have been made available for the verification of the weights and measures of capacity to be used by any Government office or Municipal Body or Railway Company, the Governor General in Council may, by notification in the *Gazette of India*, direct that, after a date to be fixed therein, all or any of the weights and measures of capacity authorized as aforesaid shall be used in dealings and contracts by such office, body or company; and may, in like manner, from time to time, alter or revoke such direction.

Use of new weights and measures of capacity in Government offices, &c.

9. After the date fixed in any notification under section eight, all dealings and contracts had and made by the officers, bodies or companies, mentioned in such notification, for any work to be done or goods to be sold or delivered by weight or measure of capacity, shall, in the absence of a special agreement to the contrary, be deemed to be had and made according to the weights or measures of capacity directed in such notification to be used by such officers, bodies or companies.

Contracts by weight or measure of capacity.

*IV.—Wardens.*

10. The Governor General in Council and the Local Government, respectively, shall appoint Wardens for the custody of the primary and local standards and sets of authorized Weights and Measures of Capacity hereinbefore mentioned.

Appointment of Wardens.

The Governor General in Council, or the Local Government, respectively, may, at any time, suspend or remove any such Warden and appoint another.

11. The Governor General in Council may, from time to time, make rules consistent with this Act for regulating the following matters:—

Power to make rules.

(*a*)—The appointment of Wardens;

(*b*)—The guidance of Wardens in all matters connected with the performance of their duties;

(*c*)—The provision, replacement, custody and use of the standards;

(*d*)—The method of verifying local standards and weights, weighing machines and measures of capacity authorized under this Act, and balances,

and of certifying such verification; provided that such verification shall not be required to be made oftener than once in two years;

(*e*)—The errors which may be tolerated in weights, weighing machines and measures of capacity authorized under this Act, and in balances;

(*f*)—The shapes, proportions and dimensions to be given to weights, weighing machines and measures of capacity authorized under this Act, and to balances, and the materials of which they may be made;

(*g*)—Marking weights and measures of capacity authorized under this Act with their several denominations;

(*h*)—The conditions under which Government offices, municipal bodies and railway companies, shall be subject to inspection and verification of the weights, weighing machines and measures of capacity authorized under this Act, and of the balances used by them;

(*i*)—The fees to be paid for verifying, correcting and certifying the verification of weights, weighing machines and measures of capacity authorized under this Act, and of balances.

Publication of rules.

**12.** Such rules shall be published in the *Gazette of India*.

Rules, when specially applied, to have force of law.

And the Governor General in Council may, by notification in the *Gazette of India*, declare that, from and after a day to be named therein, all or any of the said rules shall come into force in respect of any Government office, municipal body or railway company, and thereupon, to the extent specified in such notification, such rules or rule shall have the force of law.

Officers of Government and others to comply with rules.

**13.** All officers of Government, municipal officers, and officers and servants of railway companies, shall comply with such rules so far as they concern them, and pay such fees as the said rules shall prescribe.

Warden may refuse to verify or correct things unfit.

**14.** The Warden may deface, or render incapable of use, or refuse to verify, correct or mark, anything brought to him for verification or correction, which appears to him unfit for verification or correction.

Exercise of any of Warden's powers.

**15.** Any of the powers and duties conferred and imposed by this Act on a Warden may be exercised and performed by any other officer whom the Local Government may, from time to time, appoint.

Counterfeiting Warden's marks.

**16.** Whoever knowingly counterfeits any mark used by a Warden under section eleven, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

**17.** The Local Government may, from time to time, prepare tables of the equivalents of weights and measures of capacity, other than those authorized under this Act, in terms of the weights and measures of capacity so authorized, and the equivalents so stated, after notification in the local official Gazette, shall be deemed the true equivalents.